RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ४] गुरुवार ते बुधवार, एप्रिल ३-९, २०१४/चैत्र १३-१९, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

REVISION APPLICATION (ULP) No. 143 OF 2001.—(1) Shri Rasik G. Mankar, B/190, Laxmi Cottage, 5th floor, B. H. Road, Parel, Mumbai-12—*Applicant—Versus*— (1) The Oberoi Towers, Nariman Point, Mumbai. (2) Shri Mohan P. Rao, Director-H.R.D. The Oberoi Towers, Nariman Point, Mumbai. (3) Shri Sanjay Shah, Enquiry Officer, The Oberoi Towers, Nariman Point, Mumbai.—*Opponents.*

CORAM.— Shri P. B. SAWANT, Member.

Appearances.— Shri Dilip Watharker, Advocate for Applicant;

Shri Rajesh Hukeri, Advocate for Opponents.

Judgement

1. This Revision has arisen out of the judgment and order passed by the 9th Labour Court Shri Shingne on 19th June 2001 in Complaint (ULP) No. 587 of 1998. By the said order, the Trial Court was pleased to dismiss the complaint filed by the Complainant Shri Mankar who had alleged that the Respondents have followed unfair labour practice in terminating his service. Being dissatisfied by the said order of dismissal of the complaint, the present Revision is preferred by the Complainant contending *inter alia* that the judgment and order passed by the Trial Court is perverse and without application of mind. Therefore, seeks intervention with the hands of this Court for setting aside the said order.

2. The facts which gave rise to the present dispute can be stated in nutshell as below.

3. The Complainant who is Petitioner before this Court was in the employment of the Respondent No. 1 since 1st April 1982. He has rendered unblemished past till his dismissal. On 12th January 1997, the chargesheet came to be issued against him. The charges mentioned therein, according to the Complainant were vague, false and not correct. The Complainant was placed under domestic enquiry on the basis of the said chargesheet. It is the contention of the Complainant that during the period of 15th October 1996 till 12th January 1997, he was not

keeping well and was suffering from mental depression. He was under treatment of Dr. Boxwala and also in J. J. Hospital under Dr. Deshmukh. Inspite of submitting a fit certificate, the Respondent disallowed him to resume the duty. The Complainant has also produced medical certificate of the Doctor as directed by the Respondent. Inspite of that a chargesheet was issued against the Complainant.

4. It is alleged that the enquiry was not fairly and properly conducted. The Enquiry Officer was bias. Therefore, the enquiry being illegal and the findings of the Enquiry Officer being perverse, the Respondent should not have based its finding and issued a dismissal order. It is the contention that the principles of natural justice are violated. Besides, the punishment awarded is disproportionate and it was only with a view to victimise the Complainant. With this and other grounds, the Complainant has prayed for declaration and consequently, the order of reinstatement etc.

5. The Respondent has resisted the complaint and contended that whatever allegations made in the complaint are false and frivolous. It is pointed out that no unfair labour practice is being followed. It is denied that the Complainant has rendered unblemished past. It is pointed out that the Complainant was required to apply in appropriate form for getting his leave sanctioned. It is denied that the Respondent was fully aware of the sickness of the Complainant. It is denied that the Respondent has acted under colourable exercise of the employer's right. His leave was not got sanctioned earlier by producing medical certificate even prior to issuance of chargesheet. Sufficient material was put up before the Enquiry Officer to substantiate the charges. Therefore, according to the Respondent, it cannot be said that the enquiry is vitiated and that the findings of the Enquiry Officer are perverse. Therefore, it is prayed that whatever conclusions drawn by the Respondent in awarding the punishment was by considering the severity of the misconduct, past record and by application of mind and not by any view to victimise the Complainant. Therefore, it is prayed that the complaint should be dismissed.

6. On considering the evidence led before the Trial Court, the Trial Court was pleased to frame issues at Exh. O-3 and on the basis of the evidence led before him, he gave his findings. So far as issue No. 3 is concerned, which was for reckoning the fact about the proportion of the punishment.

7. The Revision Petitioner has made it clear that the Revision has been preferred only for limited purpose of considering the proportion of the punishment. The Revision Petitioner is dissatisfied with the order of dismissal of the complaint contending that the Trial Court has erred in not considering that the domestic enquiry was an empty formality. It is also pointed out that the alleged sickness of the wife of the Complainant was the circumstance beyond the control of the Complainant. The Trial Court has not considered the past record. The documents which were relied on by the Respondent are not duly proved and this particular fact has not been properly considered by the Trial Court. The fact that the Complainant is active member of the union has over looked by the Trial Court. It is pointed out that the entire approach of the Trial Court was also not legal and proper and, therefore, it is prayed that the order be set aside and the complaint be allowed with consequential reliefs as prayed in the complaint.

8. As against these submission, the Respondents have supported the order passed by the Trial Court by pointing out that the Trial Court has properly considered the oral and documentary evidence and there is no scope for this Court for interference.

9. Upon hearing both the sides, following points arise for my determination :—

Issues	*Findings*
(1) Whether the order passed by the Trial Court of dismissing the original complaint is legal and proper ?	Affirmative.
(2) Whether any interference in the said order with the hands of this Court is required ?	Negative.
(3) If yes, to what extent ?	Does not arise.
(4) What order ?	As per final order.

Reasons

10. *Point No. 1.*—While citting in Revision, the powers of the Industrial Court are critilised by Hon'ble High Court in various cases. The common principle as laid down in various citations can be enunciated that the powers given to the Industrial Court are limited supervisory jurisdiction under Sec. 44. Therefore, the Industrial Court cannot act like Appellate Authority and take upon its task of reappreciating the entire evidence to find out whether the decision of the Labour Court was correct or not. In a case of *1997-LLR-574,* the Industrial Court has interfered with the findings of fact under the guise of exercising revisional powers. Hon'ble His Lordship in that case has held that the Industrial Court virtually exercises appellate powers and that too perversely. It is, therefore, very clear that the scope of enquiry available for the Industrial Court is very narrow and the said narrow jurisdiction cannot be overstepped and no powers can be accorded for reassessing the entire evidence which has been already assessed by the Trial Court. In the recent case of *Hoechst Marion Roussel Ltd.* V/s. *Smt. Rhona Norena and Another 2000-II-DLN-503.* Hon'ble parent High Court has set aside the finding of the Trial Court which has exercised its jurisdiction under section 44 by reappraising the entire evidence and substituting its finding and such conclusions have been held to be as illegal, perverse and without jurisdiction and was being quashed.

11. I have referred above principles only with a view to restrict myself while considering the prayer under Revision. It is admitted position that the findings of the Trial Court so far as the fairness and legality of the enquiry as well as perversity of the findings of the Enquiry Officer are not being made as the subject matter of this Revision. The only aspect, therefore, being agitated is of the quantum of punishment which has been awarded to the concerned employee. The clinching circumstance which needs to be pointed out at this juncture is that of the employee concerned has no where denied that he was absent from duty on the dates mentioned in the chargesheet. He has admitted the absenteeism and in fact the guilt that he has not proceeded on leave by resorting to the procedural steps.

12. As has been pointed out by the Respondent that a procedure has been prescribed for obtaining the leave. The leave is being sanctioned if such procedural step as prescribed under Standing Orders are being followed. Admittedly, the employee concerned has produced certain medical certificates and has repeatedly insisted that he was under mental tension and, therefore, could not resume the duty. On this set of fact that the Trial Court has held that the absenteeism is erroneous and severe misconduct under the Standing Orders and thereby has found no reason to interfere in the order of dismissal passed by the employer.

13. On these substance of averments narrated before me, I have found the order passed by the Trial Court and in para 6 of his judgment, he has considered the evidence led which refers to the absence of 89 days before issuance of chargesheet. The Trial Court has also considered the letter correspondence between the employer and the Complainant regarding employer's role to issue show cause notice or to call on the Complainant by pointing out his absence as well as his proceeding on leave without any permission. The apology tendered by the Complainant has also been reckoned by the Trial Court.

14. On these scrutiny of evidence, the Trial Court has considered the elaborate submissions of the Advocates on behalf of the Complainant and the Respondent on the proportion of punishment and thereby in para 8 of his judgment, he has considered the past record Exh. C-3 in between 1989 and 1992. By relying on the observations of Hon'ble Supreme Court in a case of *State of U.P. and others* V/s. *Ashok Kumar Singh and Another, AIR 1996 Supreme Court-736* and *Brihan Mumbai Municipal Corporation* V/s. *The General Secretary, BEST Workers Union and Others, 1999-LLR-232,* the Trial Court has considered the absenteeism as severe and thereby confirmed the punishment.

15. Referring to the entire approach of the Trial Court, I have found that there is no perversity in the order of the Trial Court. There is no irregularity in extending the approach to such manner. It is also transpired that the scope available to the Trial Court was limited to the extent of considering the proportion of punishment. That role seems to have been properly discharged by the Trial Court. The learned Advocate Shri Watharkar for the Revision Petitioner has brought my attention towards the explanation given by the Complainant and reiterated that the Complainant was suffering with mental depression. He has also pointed out that the Complainant was working as utility worker in the kitchen of the hotel. On considering these submissions, it is clear that the absenteeism is more than 10 days. The absence of the Complainant has caused the working in the kitchen and this particular aspect has been properly valued by the Trial Court. In these circumstances, it is very clear that the absenteeism of the employee concerned has been reckoned by the employer himself as well as by the Trial Court. The punishment did attract in the said occurence of the misconduct. This also can be said as accepted proposition. Therefore, when the Trial Court has found no perversity in the dismissal order issued by the employer, I do not find that there is a perversity in such conclusion because the Trial Court has entirely evaluated the evidence which was led before him and thereafter he has come to the conclusion.

16. The learned Advocate Shri Watharkar has brought my attention towards the observations of Hon'ble Punjab and Haryana High Court in a case of *Devi Saran* V/s. *Union of India (Through Ministry of Defence), New Delhi, 1998 (4)-LLN-438.* The relevant observations therein in para 9 wherein Hon'ble His Lordship has observed that :—

> "Certainly imposition of punishment is a matter which falls in the domain of disciplinary authority and Courts would not normally interfere in the quantum of punishment, unless such order apparently pricks the judicial conscious of the Court."

Hon'ble His Lordship has referred to the observation in a case of *Constable Kushalsingh* V/s. *Union of India. 1997-III-RSJ-357* which refers to :—

> "Once it is shown on record that the enquiry conducted in accordance with the rules and in consonance with the principles of natural justice, the jurisdiction of the Court to interfere in quantum of punishment awarded by the authorities concerned is a limited one. The quantum of punishment falls in the domain of disciplinary authority as authority is *Jus Galdii* in this regard."

Considering the view, I have referred the submission in the complaint itself that the Complainant alleged to be the active member of the Union and, therefore, he is raising a point that he has been victimise. Inspite of his submission, I have found that the enquiry proceeding which is in the record of the Trial Court indicates elaborate and detail enquiry was being conducted though at this juncture, it is not necessary for this Court to go into that aspect but while considering the circumstances and awarding punishment of dismissal, it has to be borne in mind that the authority whether has given a punishment of dismissal without application of mind or without looking into the fact that the punishment of dismissal referring to the charges proved against the delinquent workmen will be a disproportionate punishment. Hon'ble Apex Court in this regard has observed in the case of *N. Rajarathiam* V/s. *State of Tamilnadu and others 1996(8) Supreme Court Case-447* in which it is observed that :—

> "Once there is a finding as regard to the proof of misconduct, what should be the nature of punishment to be imposed is for the Disciplinary Authority to consider. While making decision to impose punishment of dismissal from service if the Disciplinary Authority has taken totality of all the facts and circumstances into consideration, it is for the Authority to take the decision keeping in view the discipline in service. Though the Court is empowered to go into the question as to the nature of punishment imposed, it has to be considered in the peculiar facts and circumstances of each case."

Referring to the principle laid down by Hon'ble Apex Court, I have found for my own satisfaction that the appropriate opportunity has been given or not to the enquiry concerned in the enquiry before imposing the punishment or in the course below and I have found that there is no room for grievances and the approach of the Trial Court, therefore, cannot be styled as bias or perverse nor of the other authorities below :—

17. The learned Advocate Shri Watharkar has further brought my attention towards the observations of Hon'ble Apex Court in a case of *Malkiat Singh* V/s. *State of Punjab and Others 1996-I-CLR-997* wherein Hon'ble Their Lordships have observed that :—

> "Absence may sometimes be inevitable and in the facts and circumstances and opportunity may be given to him to work efficiently to prove his excellence. Direction is given to take the Appellant back in service without back wages."

The employees was absent for one month and 9 days. In the instant case, the Complainant was absent for 89 days. The facts indicate that he has not obtained the leave by adopting procedural steps. The defence, therefore, put up by the employees concerned was not accepted by the Trial Court for such act on the part of the employee. I have found no circumstacnes wherein this Court can interference by setting aside the detail findings of the Trial Court and replace my own view by directing the employer to reinstate the Complainant.

18. With all the above circumstances, I am within my ambit of the scope of section 44 as being embarked in several cases. Out of which, relied on by Shri Hukeri, Advocate for the Opponent in a case of *Vithal Gatlu Marathe* V/s. *Maharashtra State Road Transport Corporation and Others 1995-I-CLR 854* and *Maharashtra State Road Transport Corporation* V/s. *Kantrao S/o. Gyanbarao Dabhale, 2000-II-CLR-865.* Having gone through the text of the observations of Hon'ble Their Lordships, I have found that there is no apparent illegality caused in the findings of the Trial Court. I have found that the Trial Court has not made any error apparent on the face of record. Therefore, there is no reason to interfere with the findings of the Trial Court. With this discussion, I have given my findings to all the points raised accordingly and pass the following order.

Order

(*i*) The Revision Application is hereby dismissed.

(*ii*) The Record and Proceedings called from the Labour Court be sent back forthwith.

No order as to costs.

P. S. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 8th July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.

INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 82 of 2002. *IN* COMPLAINT (ULP) No. 271 of 1992.—Dr. Bharati P. Shah, 4-Manohar Bhuvan, 88, Dr. Atmaram Merchant Road, Bombay-400 002.—*Applicant—Versus*—M/s. Thackersey Moolji Old Hanuman Lane Charitable Dispensary Trust, Sir Vithaldas Chambers, 16, Bombay Samachar Marg, 2nd Floor, Mumbai-400 023.—*Respondent.*

In the matter of revision under Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri R. D. Bhat, learned Advocate for the Applicant.

Shri S. P. Singh, learned Advocate for the Respondent.

Oral Judgment

(Dated the 6th July 2002)

The present revision application is preferred by the Original Complainant against the Order below Exh. U-25 dated 6th April 2002 whereby the 10th Labour Court, Mumbai rejected the said application which was for re-casting the issue.

2. The brief facts may be stated as follows :—

Record reveals that the Complainant has filed Complaint (ULP) No. 271 of 1992 alleging unfair labour practices under item 1(*a*), (*b*), (*d*) and (*f*) of schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 and thereby claimed various reliefs as mentioned in the complaint. Record further indicates that an application for amendment of Written Statement was preferred by the Respondents and the said amendment was allowed by the Labour Court *vide* order dated 29th November 2001 and thereby there was an amendment by way of addition as para 2(k). The Labour Court framed the issues on 23rd January 1998 and again in view of the pleadings of the parties framed additional Issue No. 3(a) as follows :—

"Whether it is proved that the Complainant is an employee within the meaning of Section 3(*5*) of the M.R.T.U. and P.U.L.P. Act, 1971 ?"

3. The Complainant filed an Application dated 26th March 2002 and thereby submitted that the status of the Complainant was challenged by the Respondents and hence the burden of proof lies squarely on the Respondents. It was prayed in the Application that the Honourable Court be pleased to recast the issue as follows :—

"Whether the Respondent proved that the Complainant is not an employee within the meaning of Section 3(5) of the M.R.T.U. and P.U.L.P. Act, 1971 ? "

4. The Respondents gave reply stating that the contention of the Complainant is not correct. It is for the Complainant to prove that she is a "workman" in view of the Bombay High Court judgment. It is further submitted that the issue is correctly framed and there is no question of re-casting the issue. Thus requested to dismiss the Application.

5. The Labour Court passed ordered below Exh. U-25 on 6th April 2002 and the same is challenged by the Applicant in the revision and requested to set aside the said order and to grant Exh. U-25. It is one of the prayer in the revision application that this Court be pleased to direct the Labour Court to re-frame the issue by shifting the burden of proof on the Respondents.

6. I have gone through the Record and Proceedings. Heard Mr. R. D. Bhat, learned Advocate for the Applicant and Mr. S. P. Singh, Learned Advocate for the Respondent. The following points arise for my determination with my findings thereon, as below :—

Points

(1) Whether Revision Application (ULP) No. 82 of 2002 is to be allowed by setting aside the impugned order below Exh. U-25 dated 6th April 2002 ?

(2) What order and relief ?

Findings

Point No. 1.—No.

Point No. 2.—Please see order below.

Reasons

7. *Point No. 1.*—It is revealed from the record and proceedings that the Complainant Dr. Bharati P. Shah has lodged a Complaint of unfair labour practices under item 1(*a*), (*b*), (*d*) and (*f*) of schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971, In para No. 1 of the complaint she has stated that "The Complainant is making this complaint in the capacity of an employee". In para No. 3(*b*), she has contended that. "The Complainant is employed as Medical Officer in the dispensary run by the Respondent No. 1 Trust." The Labour Court has framed the additional issue, referred to above. The Complainant in her affidavit-in-reply to the amended portion of the Written Statement, has stated in para No. 3 that "I deny that I was a part--time Doctor in the Dispensary. I say that I was working as a Medical Officer for the whole-time for the dispensary."

8. Now the main contention and grievance of Applicant's Advocate is that the Labour Court erred in rejecting the Application Exh. U-25 which was for recasting the issue, detailed above and canvassed that in fact the burden of proving the said issue is on the Respondents because they have carried out the amendment to the Written Statement after 9 years and in view of the said amendment the Labour Court has framed the additional issue. According to Mr. Bhat the Respondents have challenged the status of the Complainant as an 'employee' within the meaning of Section 3(*5*) of the M.R.T.U. and P.U.L.P. Act and therefore it is for the Respondents to prove the said issue. The another contention of Mr. Bhat is that the Labour Court should have re-casted the issue by shifting the burden of proof on the Respondents to prove that the Complainant is not an employee. Thus Mr. Bhat canvassed that the Labour Court should have allowed Exh. U-25 and that the burden of proof lies upon the Respondents regarding proving the status of the Complainant as an 'employee' and not on the Complainant. To substantiate his submission, he placed reliance on a ruling reported in *1979 (39) FLR 70* (Shankar Chakravarti *Vs.* Britannia Biscuit Company Ltd. and another). On going through this case, it shows that there was a problem for consideration under Section 10,33 of the I. D. Act, 1947. There was a penal termination of services of a workman Adjudication of Adduction of additional evidence in proceedings under Section 10 or Section 33 of Act Duty of parties no duty cast on Labour Court or Industrial Tribunal to call upon workmen or employer to adduce additional evidence *Quasi Judicial* power Exercise by Labour Court or Industrial Tribunal. Mr. Bhat also pointed out a ruling reported in *1991-II-CLR- 789 (R. M. Nerlekar* Vs. *The Chief Commercial Supdt. Central Railway Bombay)* wherein also there was a point for consideration regarding jurisdiction of the Tribunal-Ouster of Burden of proof. It is a trite law that a party who sets us a defence of ouster of the jurisdiction of a Tribunal must prove the material requisite for supporting such a plea. Mr. Bhat also pointed out para No. 6 of the said ruling and it shows that the Respondents having set up the defence that the Applications were not workman within the meaning of Section 2(s) of the Act, the burden lay upon them to satisfy the Labour Court on cogent material that it was so. Mr. Bhat also cited a case reported in *1994 II CLR 51* [Narang Latex and Dispersions Pvt. Ltd. *Vs.* S. V. Suvarna (Mrs.) and another] in respect of burden of proof. There was a Reference as regards termination of service of a workman. Termination after domestic enquiry. Whether

enquiry was fair and just was the issue. On whom is the burden or who to enter witness box first. Head that on the principle that the burden would lie on a party who would fail if no evidence is led by either of the parties, it would be for the workman to lead evidence first in order to show that the domestic enquiry is not fair and proper and therefore the order of dismissal is wrongful. Mr. Bhat lastly invited my attention to a case reported in *1980 (41) FLR 156 Waman Ganpat Raut* Vs. *Cadbury Fry (India) Pvt. Ltd., another)* In this case, there was a problem for consideration under Section 10, 2(s) of the I. D. Act. There was a Reference for adjudication Preliminary issue raised Party challenging claim to lead evidence in first instance. Issue whether Petitioner is "workman" within meaning of definition. Burden of proof is on employer who challenges. Thus relying on the aforesaid cases, Mr. Bhat stressed that in the case in hand when the Respondents have challenged the status of the Complainant whether she is an employee or not it is for the Respondents to lead the evidence. According to Mr. Bhat the Labour Court ought to have re-casted the issue as detailed above and thus there is an illegality and error committed by the Labour Court.

9. It is significant to note that as mentioned earlier, in the Main Complaint the Complainant has claimed that she has filed the said complaint in the capacity of an employee and she is also claiming that she is a Medical Officer. In the affidavit-in- reply, referred earlier dated 6th March 2002, she has categorically stated that she was working as a Medical Officer for the whole time in the Dispensary. Thus it makes it clear that she has asserted her status on the one hand as a Medical Officer working for the whole time in the Dispensary and on the other hand she has mentioned in the complaint that she has filed the same in the capacity of an employee. In view of this position, I don't find that the additional issue framed by the Labour Court, as detailed earlier, is wrong.

10. Mr. S. P. Singh learned Advocate for the Respondent canvassed that the Complainant is claiming her status under Section 3(*5*) of the M.R.T.U. and P.U.L.P. Act as an 'employee' which is analogous to Section 2(s) of the I. D. Act, wherein there is a definition of 'workman' and therefore the initial burden lies on the Complainant to prove whether she is an employee or not and it is not for the Respondents to prove the said contention by leading evidence first. In support of his contention, Mr. S. P. Singh relied on a case reported in *1987 II LLN 968 (N.S. Engineering and Service Company* Vs. *Tribunal, Goa, Daman and Diu and another).* On going through this case, it shows that reference was made by the Government regarding the reinstatement of he workman. It shows that the employer had terminated he services of the workman. The validity of termination order was challenged by he workman by raising industrial dispute. The State Government at the instance of the workman referred the dispute for adjudication to the Labour Court. It was thus incumbent for the workman to have appeared and substantiated his allegation that the termination was not valid or legal. It is observed and held that in a judicial proceeding if no evidence is produced, the party challenging the validity of the order must fail. It is well settled that if a party challenges the legality of an order, the burden lies on him to prove illegality of the order and if no evidence is produced the party invoking jurisdiction of the Court must fail. Mr. S. P. Singh also placed a reliance on a case reported in *2001 II CLR 155* [*Northcote Nursing Home Pvt. Ltd. Bombay and another* Vs. *Zarine H. Rahina (Dr.) (Mrs.) and another*]. On carefully going through this case, it reflects that there was a point for consideration under the M.R.T.U. and P.U.L.P. Act, 1971 *i. e.* Complaint by employee of Unfair Labour Practices- Respondent denied Complaint to be workman-Question is on whom lies the burden to prove that Complainant is Workmen-Industrial Court held that burden lies on the Petitioner employer and he has to enter witness box first. Hence the Petition was filed by the Petitioner employer. While setting aside the impugned order of the Industrial Court, it is held that initially the burden is on the Respondent employee to prove that she is workman under Section 2(s) of the Industrial Disputes Act and she has to enter the witness box first. It has been observed that "On the general principles of Civil Law, it is for the party to lead evidence to prove the positive facts and it is not for the other side to prove the negative facts. If the Respondent had pleaded positively that she was a workman as contemplated by law, in that case, it was for her to step in the witness box to prove her positive assertion that the duties performed by her fell within the parameters of the definition of workman. It is not for the other side to prove how the Respondent was not a workman. "Thus relying on the aforesaid cases. Mr. Singh urged that the Labour Court has considered the pleadings of the parties and also the submissions advanced by the learned Advocates and there is no apparent error or illegality committed while rejecting the Application Exh. U-25 of the Complainant.

11. It is important to note that in the case in hand, as detailed earlier, because of the pleadings of the parties, the Labour Court has framed the additional Issue No. 3 (*a*) as referred earlier and I don't find that there is any patent error or illegality committed by the Labour Court to invite the Application of the Complainant to re-cause the issue. It is important to note that the Complainant has knocked the doors of the Labour Court alleging unfair labour practice on the part of the Respondents and thereby prayed for the necessary reliefs, as mentioned in the complaint. As detailed earlier, the Complainant has asserted that she has filed the complaint in the capacity of an employee and in her affidavit she has mentioned that she was working as an Medical Officer for the whole-time in the Dispensary. Hence considering the status claimed by the Complainant, it is for her to prove the same by adducing oral evidence. The Labour Court has in the impugned order considered all the aspects carefully, including Sections 101, 102 of the Indian Evidence Act which pertains to burden of proof and also referred Section 3(5) of the M.R.T.U. and P.U.L.P. Act and also Section 2(s) of the I. D. Act and I don't find that there is any mistake or error on the part of the Labour Court in coming to the conclusion that the burden is upon the Complainant to prove that she is an 'employee' within the meaning of the aforesaid Sections. Similarly when the additional issue was framed by the Court regarding the status of the Complainant. I don't find that the said issue was to be re-casted, as prayed in the Application Exh. U-25.

12. It is to be noted that as per Section 44 of the M.R.T.U. and P.U.L.P. Act, the Industrial Court has limited jurisdiction and it cannot re-appreciate the evidence and overturn the findings of fact. Thus on carefully and critically examining the facts and the law-points involved in the case in hand, in totality, I don't find that the interference of the Industrial Court is called for to invoke the powers under Section 44 of the M.R.T.U. and P.U.L.P. Act. Hence, the Revision Application seems to be devoid of merits and I, therefore, answer point No. 1 in the negative.

13. By order of this Court dated 22nd January 2002, in Revision Application (ULP) No. 9 of 2002, the complaint was already expedited. Hence, it is desirable and necessary to expedite the same and to be disposed of within a particular timelimit.

14. *Point No. 2.*—In view of the foregoing reasons, I pass the following order :—

Order

Revision Application (ULP) No. 82 of 2002 is dismissed.

Complaint (ULP) No. 271 of 1992 is expedited and the Labour Court to make endeavour to dispose of the same by the end of September, 2002.

Parties and Advocates are directed to co-operate the Labour Court for expeditious disposal of the Complaint within the time limit stipulated above by not taking unwarranted adjournments.

No order as to cost.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
Dated the 6th July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 16th July 2002.

INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 103 of 2002.—IN MISC. CRIMINAL COMPLAINT (ULP) No. 45 of 2000.—(1) Manohar Photo Offset, A-57, Royal Industrial Estate, 5-B Naigaum Cross Road, Wadala, Mumbai 400 031, (2) Neelam Shirodkar, Partner, Manohar Photo Offset, Wadala, Mumbai 400 031.—*Applicants. Versus*—(1) Anant Ankush Sawant, Bhosale Chawl No. 2/8, Shivaji Nagar, Vakola Bridge, Santacruz (E.), Mumbai 400 055, (2) M. G. Choudhary, Judge, 5th Labour Court, Mumbai.—*Respondents.*—AND—REVISION APPLICATION (ULP) No. 104 of 2002. IN MISC. CRIMINAL COMPLAINT (ULP) No. 46 of 2000.—Manohar Photo Offset and another.—*Applicants. Versus*—(1) Suresh Keshav Kadam, 'Shram Safalya' Parab Chawl, Near Khedkar Baba Society, Nardas Nagar, Bhandup (West), Mumbai 400 078 and anothers—*Respondents.*

In the matter of Revision Applications under Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri P. C. Pavaskar, Learned Advocate for the Applicants.

Shri Rajesh Hukeri, Learned Advocate for the Respondent workmen.

Common Oral Judgment

(Dated the 29th July 2002)

Both the Revision Applications are preferred by the Original Accused against the Order below Exh. C-6, dated 6th February 2002 whereby the 5th Labour Court, Mumbai rejected the Application of the Accused persons for recalling the issuance of process dated 11th April 2000 r/o. 16th May 2000.

2. In both the Revisions, the facts are common and therefore the same are narrated as under :—

It is seen that the Complainant Anant A. Sawant and another Complainant Suresh K. Kadam were working with the Applicant herein *i. e.* employer as a Helper and Operater respectively. They proceeded on leave w.e.f. 24th April 1998 and were to resume on 15th May 1998 as per the sanction, but they both resumed on duty on 19th May 1998. The employer because of loss of confidence terminated the services of both the employees by issuing a letter dated 17th May 1998. Feeling aggrieved of the said termination letters, Shri Anant A. Sawant filed Complaint (ULP) No. 423/1998 and Shri Suresh K. Kadam filed Complaint (ULP) No. 421/1998, thereby alleging unfair labour practice on the part of the employer *i. e.* Applicants herein under item 1 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, and they prayed for the reliefs mentioned in the Original Complaints.

3. It is seen that both the Complainants filed Application Exh. U-2 for Interim Relief in the respective Complaints and the said Application was contested and the Labour Court by order dated 24th May 1999 allowed the said Application, thereby directing the Respondents to withdraw the termination order dated 17th May 1998 issued to the Complainants and allow them to resume their duties and earn their wages till the final disposal of the complaints. The said order was to take effect after one month from the date of the order.

4. Record reveals that the Applicants *i.e.* employer issued retrenchment notices dated 15th January 2000 to both the Complainants stating therein that the Company was unable to provide work to both the employees Complainants on the said machine *i.e.* Letter Press Cylinder Machine during the last couple of years because of the drastic reduction in the work-load on the said machine and hence services of both the employees were retrenched by offering them the due amount being full and final settlement, as per the annexure to the retrenchment notice.

5. Feeling aggrieved of the said retrenchment notices, both the Complainants have filed Misc. Criminal Complaint (ULP) Nos. 45/2000 and 46/2000 under Section 48 (1) of the M.R.T.U. and P.U.L.P. Act, 1971 and the same were assigned to 5th Labour Court, Mumbai. The aforesaid Criminal Complaints were filed for non-compliance of the interim order passed by the Labour Court, Mumbai in their respective complaints, referred to above and therefore it was prayed for issuance of process to the Accused persons *i.e.* Applicants herein and try the offence committed by them under Section 48 (1) of the M.R.T.U. and P.U.L.P. Act. The Labour Court recorded the verification of the respective Complainants and on satisfaction thereof, by its order dated 11th April 2000 issued the process returnable on 16th May 2000. Feeling aggrieved of the said order, the Applicants herein filed application Exh. C-6 in both the Criminal Complaints and thereby requested the Labour Court to re-call and quash the order of issuance of process and the same has been rejected by the Labour Court by the impugned order dated 6th February 2002. Thus feeling aggrieved of the said order, the Applicants have filed the present Revision Application under Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971 and thereby requested to allow the Revisions by setting aside the impugned order passed by the Labour Court on the grounds mentioned in the Memo of Revision Application.

6. I have called for the record and proceedings and gone through the same. Heard Mr. P. C. Pavaskar, Learned Advocate for the Applicants and Mr. Rajesh Hukeri, Learned Advocate for the Respondent workmen. The following points arise for my determination with my findings thereon as below :—

Points

(1) Whether Revision Application (ULP) No. 103 of 2002 and Revision Application (ULP) No. 104 of 2002 are to be allowed by setting aside the impugned order below Exh. C-6 dated 6th February 2002 passed by the 5th Labour Court, Mumbai ?

(2) What order and relief ?

Findings

Point No. 1.—No.

Point No. 2.—Please see order below.

Reasons

7. *Point No. 1.*—Record and Proceedings indicate that Mr. Sawant and Mr. Kadam were working with the Applicants herein as Boiler and Operator respectively. As detailed above, both the employees proceeded on leave from 24th April 1998 and were to resume on 15th May 1998 but failed and resumed on 19th May 1998. In view of their over staying the sanctioned leave, the employer *i.e.* Applicants herein issued termination letters dated 17th May 1998 stating therein that both the employees were informed at the time of sanctioning their leave, that the Firm was expecting to receive some orders in the second week of May 1998 and that their presence was required and they should report for duty on 15th May 1998, to which they had agreed, but they failed to resume duty immediately on 15th May 1998 and the employer *i.e.* Applicants herein sustained a loss of Rs. 2 lakhs because they could not accept and comply the order of M/s. McDowell and Co. Ltd., which was received on 13th May 1998 and was to be delivered on 17th May 1998. Thus as mentioned above feeling aggrieved of the said termination the Complainants lodged two separate complaints alleging unfair labour practice, wherein Application Exh. U-2 was also filed and relief has been granted by the Labour Court on 24th May 1999 as detailed above.

8. Now the main contention and grievance of Mr. Pavaskar, Learned Advocate for the Applicants is that the Order passed by the Labour Court below Exh. U-2 is operative only in respect of the subject matter of the Complainants filed by the Complainants and accordingly the Complainants worked till 15th January, 2000, but there was a lay-off in the meantime for want of work. It is, therefore, the employer was at liberty to take action by issuing retrenchment notices dated 15th January, 2000. As per the submission of Mr. Pavaskar the

cause of retrenchment is different than the termination notices dated 17th May 1998 and therefore there is no question of breach of the Order below Exh. U-2 and hence the Labour Court should not have taken cognizance of the Criminal Complaints by issuing the process against the Applicants herein, as detailed above and this being the illegality and error committed by the Labour Court, Application Exh. C-6 for re-calling the issuance of process ought to have been granted but the same has been rejected by the Labour Court.

9. It is significant to note that the order below Exh. U-2 dated 24th May 1999 passed by the Labour Court indicates that the Original Respondents *i.e.* Applicants herein were directed to withdraw the termination orders dated 17th May 1998 issued to the Complainants and allow them to resume their duties and earn their wages till the final disposal of the complaints. The wording of this order indicates that the Complainants were permitted to earn their wages till the disposal of the complaints. But in the mean time it shows that after passing the said order, retrenchment notices were issued by the employer on 15th January 2000, as described earlier. Hence, there is a controversy between the parties *i.e.* according to Mr. Pavaskar there is no violation of the Order below Exh. U-2 dated 24th May 1999 and according to Mr. Rajesh Hukeri there is a violation of the said order by issuing retrenchment notices dated 15th January 2000. According to the submission of Mr. Rajesh Hukeri the order below Exh. U-2 clearly indicates that till the disposal of the complaints the respective Complainants were directed to earn wages and therefore the retrenchment of their services by letter dated 15th January 2000 is nothing but disobedience of the order passed by the Labour Court below Exh. U-2.

10. It is necessary to place on record that the retrenchment notices, as detailed above are issued by the employer and there is no dispute about the same. But the disputed position is that despite the order below Exh. U-2, the services of the Complainants have come to an end. Meaning thereby there is no effect of the order below Exh. U-2. I am aware that much stress was given by Mr. Pavaskar that the subject matter of the Original Complaints is totally different compared to retrenchment notices, as in the Original Complaints the Complainants have challenged the termination letters dated 17th May 1998 which were for loss of confidence, whereas the retrenchment notices have been issued for want of work. As such, the cause of action is different. According to Mr. Pavaskar the employer is at liberty to retrench the services of the Complainants despite the order of the Labour Court. He further stressed that the order below Exh. U-2 cannot be made applicable in respect of retrenchment etc., but the same is confined only to termination letters dated 17th May 1998 as detailed above and hence the employer has rightly retrenched the services because of the compelling circumstances and hence no deliberate or intentional violation or disobedience of the Order of the Labour Court and on the said ground the Labour Court should have recalled the order of issuance of process, as narrated above.

11. At this state it is rather difficult to share the submission of Mr. Pavaskar for the simple reason that there is a question of interpretation of the Order below Exh. U-2 as the Labour Court therein directed the Applicants to allow the Original Complainants to resume their duties an earn their wages till the final disposal of the complaints. Meaning thereby unless and until both the complaints were disposed of the Complainants were permitted or allowed to earn their wages and hence at this juncture I am of the view that whether the retrenchment notices dated 15th January 2000 are in violation of the order below Exh. U-2 or not that can be decided at the time of hearing the Main Misc. Criminal Complaints. *Prima facie* it indicates that the Complainants were permitted or allowed to earn their wages till the disposal of the complaints. Meaning thereby their services were not to be put to an end by either way.

12. On carefully going through the record and proceedings and particularly the verification recorded by the Labour Court of the respective Complainants viz. Mr. Sawant and Mr. Kadam, it shows that they have deposed as per the averments made in the Criminal Complaints and the Labour Court has on its satisfaction issued the process by order dated 11th April 2000 which were made r/o. 16th May 2000. As per Section 200 of the Criminal Procedure Code it

is for the concerned Magistrate (Labour Court) to examine the Complainant and the witnesses if any and after recording the verification if the Court is satisfied then shall issue the process under Section 204 of the Cr. P. C. In the case in hand the Labour Court has followed the procedure and I don't find that there is any error or illegality while passing the order of issuance of process.

13. I am aware that much was canvassed by both the parties in respect of different cause of action regarding termination letters dated 17th May 1998 and retrenchment notices dated 15th January 2000 and at this juncture I don't find that it is necessary to go into the merits and de-merits regarding the said aspect while deciding the Revision Applications. If any opinion is expressed it will cause prejudice to both the sides when Misc. Criminal Complaints are pending decision. It is further pertinent to note that the Industrial Court under Section 44 of the M.R.T.U. and P.U.L.P. Act can interfere in the Order passed by the Labour Court if it is inconsistent to the facts and the evidence on record and then can set aside the same. I am of the view that the Labour Court has taken care of recording the verification and then issued the process and also on carefully examining the facts and circumstances of the case, rightly rejected the Application Exh. C-6 which was for recalling or quashing the order of issuance of process. It is also to be noted that the Labour Court has while passing the impugned order considered the case-laws relied by the Applicants and came to the right conclusion that no exception is made out for recalling the issuance of process. Hence the Revision Applications preferred by the Applicants seem to be devoid of merits and therefore I answer the point No. 1 in the *negative*.

14. *Point No. 2 :*—For the reasons stated above and finding on Point No. 1, I pass the following order :—

Order

Revision Application (ULP) No. 103 of 2002 and 104 of 2002 are dismissed.

No order as to cost.

U. R. PATIL,
President,
Industrial Court, Maharashtra,
Mumbai.

Mumbai,
Dated the 29th July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 2nd August 2002.

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IN THE INDUSTRIAL COURT, AT MUMBAI

REVISION APPLICATION (ULP) No. 79 of 2001. *IN* COMPLAINT (ULP) No. 07 of 2001.—Voltas Limited, 19, J. N. Herdia Marg, Ballard Estate, Mumbai-400 038.—*Applicants—Versus*—(1) Shri U. S. Bajetha, C/101, Shramik Siddhi Shankeshwar Nagar, Nalasopara East, Dist. Thane. (2) The President Officer, Vth Labour Court, Mumbai-400 051.—*Opponents.—AND*—REVISION APPLICATION (ULP) No. 10 of 2001.—Mr. Umed Singh Bajetha, C/101, Shramik Siddhi, Shankeshwar Nagar, Nalasopara East, Dist. Thane.—*Applicant—Versus*—(1) Voltas Limited, 19, J. N. Herdia Marg, Ballard Estate, Mumbai-400 001. (2) The Presiding Officer, Vth Labour Court, Mumbai.—*Opponents.*

In the matter of revision Applications under Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971, against the order dated 7th April, 2001 passed by the Vth Labour Court, Mumbai, in Complaint (ULP) No. 07 of 2001.

PRESENT.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Shri S. P. Salian Advocate for Employee.

Shri P. N. Salgaonkar Advocate for Company.

Common Judgment and Order

1. The Applicant Company in Revision Application (ULP) No. 79 of 2001 *i. e.* the Opponent in Revision Application (ULP) No. 102 of 2001 is the Respondent Company in the complaint being Complaint (ULP) No. 07 of 2001 filed by he Opponent employee in the former revision application *i. e.* the Applicant in the letter revision application, before the Labour Court, Mumbai, for unfair labour practices under item 1 of schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. (Hereinafter the employee is referred to as the Complainant employee and the company is referred to as the Respondent company.

2. The Complainant employee has approached the Labour Court, Mumbai, with the following facts :—

He is in the employment of the Respondent company as a Watchman from 1979. His service record is clean and unblemished. During the period of 15 months before this complaint, the Respondent company introduced Voluntary Retirement Scheme (VRS) twicely and also Early Separation Scheme (ESS) with a view of reduce the number of employees in all the categories. He was persuaded and pressurised by the Manager to avail for the said VRS and he was also threatened that in case of failure to avail the said VRS, he would required to face the tough time. Other, 4 watchmen availed the VRS under coersion, but he refused to accept the said VRS. On that cound the Respondent company was looking for an opportunity to victimise him. He has further alleged that on 12th April, 2000, he left his house at 4.00 a.m. and he reached the Head Office of the Respondent company at about 6.50 a.m. for attending his duty. On marking his attendance, he collected the keys and went to Manekji Wadia Building. He reached there at about 7.30 a.m. as his duty was fixed there. He was required to walk for about an hour to reach there. The lift in the said building was also not working condition he was therefore, required to go by staircase on 6th floor. He has further alleged that he being a patient of high blood pressure and diabetes he became uneasy as a result, he took medicines, which were with him. Due to all these things, his physical condition became worst and he became virtually unconcious. In the circumstances, he was taken to the police station instead of taking to the hospital. Then he was taken to the St. George Hospital. Then, he was issued a chargesheet on the ground of consuming liquor. Thereafter, the enquiry was conducted but he was not given a fair and proper opportunity in the said enquiry. The said enquiry was conducted in utter disregard to the principles of natural justice and the findings drawn by the Enquiry Officer are perverse. Thus, he has been victimised. Now, the Respondent company wants to dismiss him from service under colourable exercise of the employer's right with undue haste, hence the complaint.

3. The Complainant employee also filed an application Exh. U-2 alongwith the main complaint for interim reliefs in terms of prayers therein. On hearing both the parties and on considering the documents, case law produced/relied on by the parties, the learned trial Judge was pleased to allow the application Exh. U-2 partly by passing order below the application Exh. U-2 dated 17th April, 2001.

4. Being aggrieved by the said order dated 17th April 2001 passed below the application Exh. U-2, the Respondent company filed the former revision application (ULP) No. 79/2001 and the Complainant employee filed the latter Revision Application (ULP) No. 102 of 2001 on the grounds as set out in their respective revision memos.

5. Heard the learned Advocates for both parties. On considering their arguments the following points arise for my consideration and I have recorded my findings thereon for the reasons stated below :—

Points	*Findings*
(1) Whether the trial Court has rightly recorded the findings and passed the order dated 17th April 2001 below the application Exh. U-2 for interim reliefs ?	No.
(2) If the findings is in the negative, whether it is required to remand the matter back to the trial Court for deciding the application Exh.U-2 afresh ?	Yes.
(3) What order ?	As per the final order below.

Reasons

6. Firstly, it is to be noted that while deciding the application Exh U-2 for interim reliefs, the trial Judge has framed the points of *prima facies* case and balance of convenience and he has recorded his findings on boths the points in the affirmative *i. e.* in favour of the Complainant employee for the reasons stated there under. However, the trial Judge has not granted the interim reliefs in terms of the prayers in the application. The operative part of the order dated 17th April 2001 passed below the application Exh. U-2 is as under :—

Order

(1) Application Exh. U-2 partly allowed.

(2) Respondent is directed to effect the punishment against the Complainant as per provisions of Standing Orders, however, if the punishment is of dismissal, discharge or otherwise termination of services of the Complainant, then it will have no effect for further period of one month from the date of receipt of the said punishment order by the Complainant.

(3) Case to proceed further.

From the above order, it appears that the application Exh. U-2 is partly allowed and the interim relief is granted in favour of the Complainant employee. As such, it is no interim relief granted in favour of the Complainant employee. Thus, the findings of the trial Judge, as recorded in Para 4 of the findings, is in the affirmative, but the Complainant employee has not been granted any substantial relief restraining the Respondent company from taking further steps in the enquiry.

7. In the order passed below the application Exh. U-2, the reasoning starts from Para 5. In the first part of this Para, the trial Judge has given a reference about the documents and affidavits filed by both parties and the gist of arguments advanced by the learned Advocates for both parties. Besides the above facts the trial Judge has given citations of the decisions of the High Courts and the Supreme Court relied on by both parties. But no observations therein are discussed. In the later part of this Para the trial Judge has given citation of the decision of Supreme Court reported in *1995 II CLR 823* and reporduced one para in the judgment of the Supreme Court. In para 6 of the order, the trial Judge has given the allegations and the incident dated 12th April, 2000 depicted from the chargesheet dated 24th April 2000. Thereafter the trial Judge has put the case of the Complainant employee and the argument of his Advocate with regard to the enquiry. On the said contention and the arguments the trial Judge has held as under :—

"However, I make it clear that these two points are not before me whether the enquiry conducted against the Complainant is not legal and fair and proper and whether the findings drawn are perverse. As these two issues are required to be considered at the appropriate stage of the proceedings and therefore considering the point before me whether the Complainant has strong *prima facie* case to grant interim relief or not. In my considered view, submission of the Complainant that enquiry held against him is not fair and proper findings drawn by the enquiry officer are perverse cannot be taken into consideration at this stage."

From the above findings it appears that the trial Judge has come to conclusion that at the stage of interim reliefs, it is necessary to consider as to whether the Complainant employee has made out a strong *prima facie* for the interim reliefs. Thus the trial Judge has also not discussed the point of strong facie case, in this para 8, para No. 7 of the order passed below the application Exh. U-2 is material, wherein the trial Judge has decided both the points of *prima facie* case and balance of convience. In the beginning the trial Judge has considered the case of the Respondent company and on considering its case he has come to conclusion that the Respondent company has followed the due process of law and it wants to inflict the punishment on the Complainant employee. In the circumstances the trial Judge has lastly

held that the Complainant employee has made out a strong *prima facie* case. In between he has held that only aspect in this matter strikes to his mind is that in *prima facie* field the Complainant employee is in the employment of 22 years as a watchmen and the request of the Complainant for his VRS was not considered by the Respondent company. He has further held that on this background the Respondent company wants to inflict punishment of dismissal against the Complainant employee on the basis of the chargesheet given to him and therefore the apprehension of dismissal of the complaint is based on some factual position on record. Thereafter, he has held that the Respondent company has every right to take action against the Complainant employee as per the provisions of the standing orders. Then, he has held as under :—

> "However, as observed above on the back ground of his 22 years services with the Respondent, though the Respondent wants to take action against the Complainant, the principles of natural justice requires that employer should not take any decision with undue haste and also in violation of principles of natural justice and therefore on this background in *prima facie* field the Complainant has proved the proposed action against the Complainant with undue haste and thereby the Respondent has engaged in unfair labour practices within the scope of item 1 of schedule IV of the M.R.T.U. and P.U.L.P. Act."

From the above observations of the trial Judge it appears that he has come to conclusion that the action against the Complainant employee is with undue haste. However, there is no discussions at any place in his order as to how the action of the Respondent company is with undue haste. It is also to be noted that the trial Judge has stated that the Complainant employee's request for VRS was not considered but it is not the case of the Complainant employee. On the contrary it is the case of the Complainant employee that he refused to accept the VRS and therefore the Respondent company was looking for an opportunity to get rid of him and on that account he was victimised. It appears that the trial Judge has taken sympathetic view only because the Complainant employee is in service for 22 years and held without any basis that the proposed action against the Complainant employee is with undue haste. It is also to be noted that the trial Judge has nowhere discussed the facts to find out as to whether the Complainant employee has made out a strong *prima facie* case for grant of the interim reliefs. Not only this the trial Judge has stated at 2/3 places that it is a matter of final hearing as to whether the enquiry is legal fair and proper and whether the findings are perverse or not and thereby avoided to discuss anything about the enquiry. As regards the point of balance of convience the trial Judge has decided the same in one line. *viz.* "Under these circumstances the balance of convience also lies in favour of the Complainant". Anyway, it appears that the trial Judge has not considered the material on record to arrive at conclusion with regard to *prima facie* case. It also appears that the trial Judge has held at one place that the Respondent company has followed due process of law, but at other places, he has taken sympathetic view. This may be the reason for not granting any interim relief sought by the Complainant employee. Anyway the trial Judge has not scanned the allegations made in the complaint to decide the issue of strong *prima facie* case. The trial Judge has also failed to discuss the necessary facts to decide the issue of balance of convience. Therefore, I have no hesitation to hold that the trial Judge has not rightly recorded the findings and passed the order dated 17th April 2001 below the application Exh. U-2 for *interim reliefs* and hence this case is fit for remanding back to the trial Court to decide both the points afresh and pass necessary order below the application Exh. U-2 according to law. In the result, the Points No. (1) and (2) are hereby decided accordingly.

9. With this, I proceed to pass the following order :—

Order

(1) Revision Applications (ULP) No. 79 of 2001 and 102 of 2001 are hereby partly allowed.

(2) Case is remanded back to the Labour Court, Mumbai to decide the points afresh in the light of the above observations.

(3) The Labour Court, Mumbai, is hereby directed to decide the application Exh. U-2 for *interim reliefs* as for as possible within a period of 2 months.

(4) Both the revision applications are hereby disposed of.

(5) No order as to cost.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated 1st August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated 6th August 2002.

INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT,

REVISION APPLICATION (ULP) No. 35 OF 2002. *IN* MISC. CRIMINAL COMPLAINT (ULP) No. 58 OF 1999.—Mr. Ramchander Pandurang Gaokar, Halimbhai Chawl, Nogri Pada, Andheri (W.), Mumbai 400 058.—*Applicants—Versus*—(1) Mr. V. B. Rege, D.G.M. (HRD), German Remedies Ltd., M. Vasanji Road, Andheri (E.), Mumbai 400 093. (2) Mr. Manifred Kholi, Managing Director, German Remedies Ltd., Shivsagar Estate, 'A' Block, Dr. Annie Besant Road, Worli, Mumbai 400 018. (3) Judge, 5th Labour Court, Mumbai.—*Respondents.*

In the matter of Revision Applications under Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri V. A. Alves, learned Representative for the Applicants.

Shri P. M. Palshikar, learned Advocate for the Respondents.

Oral Judgment

(Dated the 2nd August 2002)

The present revision application is filed by the Original Complainant Mr. Ramchander Pandurang Gaokar feeling aggrieved of the Order below Exh. C-6 and C-10 dated 5th December, 2001 whereby the 5th Labour Court, Mumbai allowed the aforesaid Applications of the Respondents herein *i. e.* employer and thereby the Order passed by the Court on 17th June, 1999 for issuance of process against the Accused was set aside and the complaint filed by the Complainant was dismissed.

2. The brief facts giving rise to the case may be stated as follows :—

Record reveals that Complainant was working with the Respondents *i.e.* M/s. German Remedies Ltd. A Complaint of unfair labour practices came to be filed under item 1(a), (b), (c), (f) of schedule IV of the M.R.T.U. and P.U.L.P. Act. The said complaint was disposed of by 4th Labour Court, Mumbai on 3rd March, 1999 by passing the following order :—

"(1) The Complainant has proved the unfair labour practice under items 1(a) and (g) only of schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

(2) The relief of actual reinstatement is now redundant as Complainant has attained his age of 60 years on 13th August, 1996 *i. e.* during pendency of this Complaint.

(3) The Respondents should pay 60% back wages to the Complainant from the date of Complainant's discharge from service *i. e.* 22nd March, 1991 to 13th August, 1996.

(4) The Complainant's service is treated as continued till his date of retirement *i. e.* 13th August, 1996.

(5) The relief of reimbursement of wrongful and illegal deductions from Complainant's wages is not granted as it is not maintainable in this complaint.

(6) The Respondents are granted 6 weeks time for compliance of this order.

(7) No order as to costs."

3. The Original Complainant thereafter filed Misc. Criminal Complaint (ULP) No. 58 of 1999 and thereby made a grievance that the Respondent employer has failed to comply the order passed by the Labour Court, referred to above and particularly in respect of the fact that the Respondents have been granted six week's time for compliance of the order. According to Complainant, the Respondents have not paid 60% back wages as ordered by the Labour within the stipulated time of six week's from the date of the order. The Complainant in the Criminal Complaint relied on the relevant documents in support of his grievance and requested the Labour Court to charge the Accused for contempt of Court's order dated 3rd March, 1999 and the Accused be prosecuted by the Honourable Court and/or the case be transferred to the Additional Chief Metropolitan Magistrate's Tenth Court at Andheri or any Court as this Court may deem fit and proper. The Labour Court recorded the verification of the Complainant on 17th June, 1999 and issued the process against the Accused persons as required under Section 48 (*1*) of the M.R.T.U. and P.U.L.P. Act. r/o. 5th July, 1999.

4. It is seen that thereafter Application Exh. C-6 was presented by Accused No. 1 Shri V. B. Rege and thereby raised objection in respect of maintainability of the Criminal Complaint as set out in detail in the said Application. Similarly Exh. C-10 was presented by Accused No. 2 Mr. M. Kholi and thereby requested to drop the proceedings against him, setting out the reasons and circumstances. The Original Complainant gave Say and resisted both the Application Exh. C-6 and C-10.

5. The Labour Court after hearing the submissions advanced by both the parties passed the impugned order on 5th December, 2001, referred to above and by filing the instant Revision Application the Original Complainant has claimed exception thereto.

6. The contentions in the Applications Exh. C-6 and C-10 may be summarised as follows :—

The two Accused persons by their respective Application Exh. C-6 and C-10 contended that the Complainant has filed the Complaint under Section 30 of the M.R.T.U. and P.U.L.P. Act on the ground stating that the Accused be charged for contempt of the Court's Order dated 3rd March, 1999 and they should be prosecuted either by the Labour Court or by Additional Chief Metropolitan Magistrate's Court, as detailed earlier. It is further contended that the said prayer cannot be granted under Section 30 of M.R.T.U. and P.U.L.P. Act as the said Section gives power to the Industrial Court or Labour Court only with respect to engagement of unfair labour practice and this Court has no power to prosecute any person and on this ground alone the complaint deserves to be rejected. The another contention is that after passing the order in Complaint (ULP) No. 112 of 1991 on 3rd March, 1999 the certified copy of the said order was received by the company from the Advocate on 26th March, 1999 and they were in process of assessing the said amount and accordingly the Complainant was informed by letter dated 13th April, 1999 and payment was made to the Complainant by letter dated 3rd May, 1999 and was paid 60% of backwages. Thus it is submitted that the order of the Labour Court has been complied with within a period of six weeks after receipt of the order and therefore there is no violation of the order of the Labour Court.

7. The Respondents *i. e.* Original Accused also submitted that as per Section 48 of the M.R.T.U. and P.U.L.P. Act, non-compliance of the order made by them under Section 30 (*2*) or Section 30 (*1*) is an offence and contempt of the Court and according to the Accused persons there is no non-compliance of the Order or wilful disobedience on their part and therefore contended that the Criminal Complaint does not disclose any cause for filing the Complaint against the Accused persons.

8. The Original Complainant by filing say at Exh. U-6 and U-9 submitted as follows :—

It is the contention of the Complainant that the Accused have filed the Application with unclean hands. According to the Complainant the order dated 3rd March, 1999 specifically directed the Accused to implement it within six weeks from 3rd March, 1999. However, the Accused are silent on the difference in salary, leave, bonus etc. Provident Fund and Gratuity are also not settled. Thus according to the Complainant there is a deliverate violation of the Order and they have committed the contempt of Court and they be punished accordingly as prayed in the Criminal Complaint.

9. I have through the record and proceedings. Heard Mr. V. A. Alves, learned Representative for the Applicant and Mr. P. M. Palshikar, Learned Advocate for the Respondents. The following points arise for my determination with my findings thereon, as below :—

Points.—

(1) Whether Revision Application (ULP) No. 35 of 2002 is to be allowed by setting aside the order dated 5th December, 2001 below Exh. C-6 and C-10 passed by the 5th Labour Court, Mumbai ?

(2) What order and relief ?

Findings.—

Point No. 1.—No

Point No. 2.—Please see order below.

Reasons

10. *Point No. 1.*—Record and Proceedings reveal that originally Complaint (ULP) No. 112/1991 was filed by the Complainant and thereby alleged unfair labour practice on the part of the Respondents *i. e.* employer under item 1(a), (b) (c) and (f) of schedule IV of the M.R.T.U. and P.U.L.P. Act. The said complaint has been decided by the 4th Labour Court, Mumbai on 3rd March, 1999 and whereby the reliefs were granted as detailed earlier. The grievance of the Original Complainant was that the Respondent employer has failed to comply the said order within six weeks from 3rd March, 1999 and therefore there is a contempt of the Court committed by the Accused persons.

11. In the beginning it is significant to note that the present Criminal Complaint filed by the Complainant in the title itself indicates that the same is filed under Section 30 of the M.R.T.U. and P.U.L.P. Act and thereby sought the relief of punishment to the accused persons in respect of violation of the order referred earlier. The said Section mentioned by the Complainant itself is erroneous for the simple reason that a plain reading of the said Section 30 (*1*) indicates that it relates to powers of Industrial and Labour Courts, wherein a Courts, decides that any person named in the Complaint has engaged in or is engaging in any unfair labour practice etc. In the case in hand the question of engaging in unfair labour practice does not arise but the grievance of the Complainant is in respect of non-compliance of the order passed by the Labour Court and therefore the Complainant should have filed the Criminal Complaint under Section 48(*1*) of the M.R.T.U. and P.U.L.P. Act and on this ground itself, the Criminal Complaint suffers from irregularity and illegality. Though there was an incorrect mention of the Section by the Complainant for taking cognizance of the Criminal Complaint the Labour Court after recording the verification of the Complainant issued the process against the Accused persons.

12. Now I have to see whether the Labour Court has committed any error or illegality while allowing Exh. C-6 and C-10 by order dated 5th December, 2001 against which the present Revision Application is preferred by the Applicant and the grievance made therein. I don't find that while allowing the said Applications the Labour Court has committed any error. It is significant to note that from the record it indicates that the present Misc. Criminal Complaint has been filed by the Complainant on 5th May, 1999. There is a letter dated 3rd May, 1999 forwarded by the Accused persons *i. e.* employer alongwith a cheque No. 342645, dated 3rd May, 1999 in respect of the amount of Rs. 3,24,520/- *i. e.* 60% of Rs. 5,40,866/- which were to be paid to the Complainant as per the order of the Labour Court. Meaning thereby on receipt of the aforesaid cheque the Complainant subsequently filed the Criminal Complaint and thereby alleged disobedience or violation on the part of the Respondents. On 13th April, 1999 a letter was given by the Respondent and thereby they informed the Complainant that they had received a letter from their Advocate on 26th March, 1999 and in pursuance of the said letter they were calculating the 60% backwages and making arrangement for payment of the same. Thus it indicates that the Respondents in pursuance of the Order of the Labour Court were calculating the dues of the Complainant and making arrangement to that effect and finally they sent a cheque alongwith the letter dated 3rd May, 1999 as detailed earlier. The Complainant has put the signature and date as 3rd May, 1999 on the copy of the said letter also in token of receipt of the letter and cheque. Meaning thereby there was no deliberately much less intentional or violation of the order by the Respondents.

13. I am aware that much stress was given by Mr. V. A. Alves for the Applicant that there was a delay of 13 days in making the payment as per the directions of the Labour Court and hence there is a Contempt committed by the Respondents. While dealing with such cases falling under Section 48 (*1*) of the M.R.T.U. and P.U.L.P. Act, the Court has to see whether the failure on the part of the employer to comply the order in respect of payment is intentional, deliberate and thereby avoided to make the payment to the aggrieved person. In the case in hand as detailed earlier, I don't find that the Respondents were avoiding to make the payment. It is because after all while calculating the arrears the employer has to see as to how much P. F. Bonus, L.T.A. Medical Leave, Salary. etc. is payable and certainly for that purpose, it requires some time and therefore that cannot be termed as deliberately delaying or employer is negligent in making the payment and thereby violated the order of the Labour Court. In the case in hand, on carefully scrutinising the Record and Proceedings and particularly the impugned judgment of the Labour Court. I don't find that the element of intentional delay in non complying the order of the Labour Court, is to be attributed. On this point Mr. Palshikar invited my attention to a case reported in *1992 II CLR 950 (SC) (V. G. Nigam and others* Vs. *Kedar Nath Gupta); AIR 1992 SC 2206 (K. M. Mathew* Vs. *State of Kerala),* which were already cited before the Labour Court and the said Court has reproduced the relevant paragraph. I am of the view that the Labour Court on making a carefully scrutiny of the case in hand and the observations made by the Honourable Supreme Court, came to a right conclusion that there is no case made out by the Complainant in respect of violation of the Order dated 3rd March, 1999. As detailed earlier the Complainant has already received the amount of Rs. 3,24,520/- by way of cheque and therefore in fact there was no grievance ought to have been made regarding the violation of the order as mentioned in the Criminal Complaint.

14. It is also significant to note that feeling aggrieved of the order dated 3rd March, 1999 the Applicant herein has already filed Revision Application (ULP) No. 64 of 1999 before the Industrial Court, Mumbai and the said Revision Application is pending. Thus it further indicates that in the Revision the result is awaited and therefore realising this position it cannot be said that granting the Applications Exh. C-6 and C-10 is an error on the part of the Labour Court.

15. On hearing the rival submissions advanced by both the parties and on carefully going through the record and proceedings and viewed from all the angles, I don't find that the Applicant has made out any exception to the impugned order passed by the Labour Court. Hence, it is rather difficult for this Court to exercise the powers under Section 44 of the M.R.T.U. and P.U.L.P. Act for the reason that under the said Section the Industrial Court is empowered only in so far as evidence is concerned to set aside the order under revision when the evidence on record reasonably read, is incapable of supporting the order. In the case in hand the Labour Court has considered all the aspects and no scope is left for the interference of this Court and therefore I answer the point No. 1 accordingly.

16. *Point No. 2.*—In view of the foregoing reasons, I pass the following order :—

Order

Revision Application (ULP) No. 35 of 2002 is dismissed.

No order as to cost.

R & P be sent back.

U. R. PATIL,
President,
Industrial Court, Maharashtra,
Mumbai.

Mumbai,
Dated the 2nd August 2002.

(Sd.) K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 8th August 2002.

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INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT,

REVISION APPLICATION (ULP) No. 19 of 2002 *IN* MISC. CRIMINAL COMPLAINT (ULP) No. 19 of 2002.—(1) M/s. Guttal Trading (India), 507, Gateway Plaza, Hirandani Gardens, Off Shankaracharya Marg, Powai, Mumbai-400 076, (2) Mr. Pmlyjulal, Manager, M/s. Guttal Trading (India).—*Applicants*—*Versus*—(1) K. Joseph Jose, D-115, Bhadreshwar Dham, Pandurang Wadi, Dombivli (E)-400 201. (2) Judge, 12th Labour Court, Mumbai.—*Respondents.*

In the matter of Revision Application under Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri C. V. Pavaskar, learned Advocate for the Applicants.

Shri A. Mathew, learned Advocate for the Respondent workman.

Oral Judgment

(Dated the 30th July 2002)

The present revision application is preferred by the Applicants *i. e.* Original Accused feeling aggrieved of the order dated 22nd February 2002 passed by the Labour Court in Misc. Criminal Complaint (ULP) No. 19/2002 for issuance of notice to the Applicants herein as to why process be not issued.

2. The brief facts giving rise to the case may be stated as follows :—

Mr. K. Joseph Jose has filed Complaint (ULP) No. 29/2000 under item 1(a), (b) and (f) of schedule IV of the M.R.T.U. and P.U.L.P. Act and prayed for various reliefs. Application Exh. U-6 for interim relief was taken out on 25th September 2000 and the 5th Labour Court, Mumbai after hearing both the sides passed order below Exh. U-6 dated 24th August 2001 thereby partly allowing the said application Exh. U-7 thereby holding that the claim of the Complainant for reinstatement with continuity and full backwages at interim stage rejected. The Labour Court however directed the Respondents to deposit the monthly wages of the Complainant in the Court from today itself till the final disposal of the complaint. It indicates that the Original Complainant filed Criminal Complaint on 1st February 2002 alleging disobedience of the order dated 24th August 2001 by the Applicants herein under Section 48 (1) of the M.R.T.U. and P.U.L.P. Act. The Labour Court passed order dated 22nd February 2002 thereby issuing notice as to why process should not be issued. Thus feeling aggrieved of the said order the Applicants herein by filing revision application have claimed exception on various grounds, as mentioned in the revision application. One of the contention is that as the First Respondent had assured the Applicants that no steps will be taken for implementation of the interim order dated 25th August 2001 the conduct of the First Respondent in filing the aforesaid Misc. Criminal Complaint (ULP) No. 19/2002 is mischievious and contrary to the understanding reached which is required to be depricated. It is submitted that the complaint is barred by promissory estoppel. Another contention is that having regard to the fact that the Review Application is pending consideration and in view of on going talk for settlement the First Respondent was not justified in filing the Criminal Complaint against the Respondent *i.e.* Applicants herein. According to Applicants the order of the Labour Court taking cognizance of the complaint and directing the Applicants herein to remain present in the Court is unwarranted and is being impugned in the Revision Application. Thus on these and other grounds it si requested in the Application to set aside the order of issuance of notice as referred to above.

3. I have called for the record and proceedings and gone through the same. Heard Mr. C. V. Pavaskar learned Advocate for the Applicants and Mr. A. Mathew learned Advocate for the Respondent. The following points arise for my determination, with my findings thereon as below :—

Points—

(1) Whether Revision Application (ULP) No. 91 of 2002 is to be allowed by setting aside the order of issuance of notice dated 22nd February 2002 ?

(2) What order and relief ?

Findings—

Point No. 1.—Yes.

Point No. 2.—Please see order below.

Reasons

4. *Point No. 1.*—Record reveals that Complaint (ULP) No. 29 of 2000 is filed by Mr. K. Joseph Jose for the necessary reliefs mentioned in the complaint. As detailed earlier, Application Exh. U-6 was taken out for interim relief and the Labour Court partly allowed the said application as detailed above by order dated 24th August 2001. The Original Complainant made a grievance by filing Misc. Criminal Complaint (ULP) No. 19 of 2002 contending therein that the Applicants herein *i. e.* employers have not complied the said order and therefore the Labour Court passed the order of issuance of showcause notice to the Applicants herein as to why process should not be issued.

5. Now the main contention and grievance of Mr. Pavaskar, learned Advocate for the Applicants is that infact there was an understanding between the parties not to take any action for the implementation of the order passed by the Labour Court as mentioned in the revision application and taking advantage of the said situation and talk between the parties the Original Complainant filed the Criminal Complaint on 1st February 2002. Mr. Pavaskar pointed out that the Review Application (ULP) No. 5/2001 was filed by the Applicants herein before the Labour Court on 12th September 2001 whereby they requested to review the order dated 24th August 2001 passed by the 5th Labour Court and accordingly the Review Application has been allowed on 29th June 2002. Realiasing this position, Mr. Pavaskar canvassed that the Complainant was aware of filing the Review Application dated 12th September 2001 and inspite of it the Complainant filed the Criminal complaint on 1st February 2002 and thereby tried to pressurise the Applicants herein. In substance, Mr. Pavaskar argued that the order passed by the Labour Court of issuance of showcause notice is erroneous and illegal particularly when by the interim order of the Labour Court dated 24th August 2001 the Complainant was not allowed to withdraw the wages and he was not to be benefitted and therefore the question of making grievance of non-compliance of the interim order has no significance and this aspect ought to have been taken into account by the Labour Court and on this score also Mr. Pavaskar stressed for setting aside the order of the Labour Court referred to above.

6. In support of his submissions Mr. Pavaskar invited my attention to a case reported in *2002 II CLR 400* (Suresh Srikrishna Naik (Dr.) *Vs. Department of Social Welfare, State of Maharashtra, Pune and another*). On going through this case it indicates that there was also a problem for consideration regarding the violation of the order. It shows that the State Government passed an order denying the benefits of pension scheme to teaching and non-

teaching staff of Institutions/Colleges under Respondent. In Earlier Writ Petition the said order was set aside and State Government was directed to consider extension of such benefits in a phased manner. State Government once again took decision not to grant such benefits because of financial restrains. Hence Contempt Petition. It is held that it cannot be said there is any violation in respect of earlier order and much less there is any wilful or deliberate violation thereof and hence contempt petition stands rejected. Relying on this case Mr. Pavaskar argued that the Interim Order passed by the Labour Court on 24th August 2001 was not disobeyed by the Applicants herein when particularly the Review Application (ULP) No. 5/2001 was pending before the Labour Court and inspite of knowing the said position the Complainant filed Criminal Complaint on 1st February 2002 and therefore the question of deliberate violation or disobedience does not arise. I find substance in the contention advanced by Mr. Pavaskar on the ground that the Complainant herein was aware of the pendency of the Review Application and when talk of negotiations was going on the Complainant hastily filed the Criminal Complaint on 1st February 2002. Mr. Pavaskar also invited my attention to a case reported in *1996 II CLR 259 (Diners Club India Ltd. and others* Vs. *Rajguru M. S. and others).* On going through this case in substance it may be stated that complaint under Section 48 was filed in respect of breach of Industrial or Labour Court's order under the Act. In a complaint of unfair labour practice by Respondent No. 1 an order of the *status quo ante* was passed after hearing both the parties later on Respondent No. 1 filed Complaint before Labour Judge alleging that the Petitioners are guilty of offence for committing breach of Court's order of *status quo ante*. Labour Judge issued process and as such the writ petition is filed for quashing the process. It has been held that considering the fact that *status quo* order is already vacated by the Industrial Court and the fact that there was no specific direction issued by the Industrial Court while passing the order of *status quo ante* it cannot be said that the Industrial Court has granted all the prayers of Complainant (Respondent No. 1). In this view of the matter the notice issued by the Labour Court for punishing the Petitioners under Section 48 of the Act is without any basis and requires to be quashed and set aside. Thus relying on this case Mr. Pavaskar argued that in the Review Application (ULP) No. 5/2001 the interim order dated 24th August 2001 has been set aside on 29th June 2002 and therefore the question of disobedience or violation of the order and taking cognizance of the Criminal Complaint by issuing showcause notice does not arise. The said submission of Mr. Pavaskar appears to be legal and proper because there is no dispute between the parties that the Review Application (ULP) No. 5/2001 has been allowed by the Labour Court on 29th June 2002 and therefore the order below Exh. U-6 dated 24th August 2001 is no more in operation and hence the question of non-compliance much less deliberate and intentional violation of the said order does not arise.

7. Mr. Pavaskar also invited my attention to an unreported judgment in writ petition No. 1757 of 2002 (Rashtriya Chemicals and Fertilizers Ltd. and others *Vs.* Ramesh Kamble and another), wherein there was also a point for consideration in the writ petition whether the order of issuance of process by the Labour Court and confirmed by the Industrial Court was legal and proper. The Honourable High Court while disposing the writ petition observed *vide* order dated 9th July 2002 that "In my opinion the Petitioners have not committed any offence under Section 48(1) of the Act and, therefore the Labour Court was not at all justified to issue process summoning the Petitioners to remain present as Accused in the complaint before the Labour Court. Even the Industrial Court has failed to appreciate and consider this aspect in Revision under Section 44 of the Act. The Industrial Court ought to have held the order of issuance of process in the given circumstances as totally illegal and perverse and ought to have exercised its power of superintendence of quashing and setting aside the process issued by the Labour Court." Relying on this case, Mr. Pavaskar urged that this Court can exercise the power of Revision under Section 44 of the M.R.T.U. and P.U.L.P. Act and set aside the order of issuance of notice, detailed above.

8. On the contrary, Mr. A. Mathew, learned Advocate for the Respondent opposed the submissions of Mr. Pavaskar, canvassing that the powers under section 44 of the M.R.T.U. and P.U.L.P. Act are limited and this Court cannot exercise the said powers like the powers of the Honourable High Court under Art. 227. He also pointed out that the Labour Court has simply passed the order of issuance of notice as to why the process should not be issued and Mr. Mathew canvassed that it is for the Applicants to approach the Labour Court to get the said order set aside and this Court cannot exercise the powers under section 44 and set aside the order. In support of his submission he placed a reliance on a judgment reported in *1991 (63) FLR page 908* (Satish J. Mehta and others *Vs.* The State of Maharashtra and another). It shows that there was a point for consideration under section 39 and 48(1) Complaint against Company interim orders were directed to the Company-Orders were not complied with by the Company-Process can be issued by Labour Court against the Personnel Manager, General Manager and Directors. Mr. Mathew further pointed out that in the case in hand, only the showcause notice is issued and not the process and therefore the Applicants herein cannot challenge the said order. He also placed a reliance on AIR 1977 S. C. 1703 (K. K. Shrivastava etc. *Vs.* Bhupendra Kumar Jain and others) and thereby canvassed that where there is an appropriate or equally efficacious remedy, the Court keep its hands off. In substance, according to Mr. Mathew the Applicants herein should have approached the Labour Court and preferred the Application for quashing and setting aside the order of assurance of notice and the Applicants cannot challenge the same by way of Revision when remedy is available before the Labour Court. Mr. Mathew also cited a case reported in *AIR 1976 S. C. 2446 (Mr. Meneck Custodji Surjarji* Vs. *Sarafazali Nawabali Mirza).* In this case there was a point for discussion and consideration under Art. 227 of the Constitution of India. It is observed and held that other adequate and comprehensive remedy by way of appeal to High Court itself, available but not availed of Circumstances not extraordinary Interference under Art. 227 in favour of Petition held was erroneous and quashed. On going through this case, I don't find that it is helpful while deciding the Revision Application because the powers vested under Art. 227 with the Honourable High Court are on wider scale while the powers under Section 44 of the M.R.T.U. and P.U.L.P. Act are limited, to be exercised by the Industrial Court. Thus relying on the aforesaid cases, in substance, Mr. Mathew argued that the present Revision Application is not maintainable and this Court cannot exercise the powers under Section 44 of the M.R.T.U. and P.U.L.P. Act when equally efficacious remedy is available before the Labour Court to set aside the order of issuance of notice dated 22nd February 2002.

9. It is rather difficult to share and accept the submission of Mr. Mathew for the simple reason that there is no dispute between the parties that the Review Application preferred by the Applicants herein has been allowed by the Labour Court on 29th June 2002 and the order dated 24th August 2001 in respect of which violation is alleged by the Complainant, is no more longer in force and to be obeyed and complied by the Applicants herein. Therefore, on this ground itself the order dated 22nd February 2002 of issuance of showcause notice is illegal and improper in view of the changed circumstances. I am aware that the Review Application has been allowed on 29th June 2002 and the present revision application is filed on 24th June 2002 *i. e.* before allowing the Review Application. But the fact remains that when the order in respect of which disobedience of deliberate violation is alleged in the Criminal Complaint which is filed on 1st February 2002 is set aside in Review Application the question of taking further steps in the Criminal Complaint does not arise. On this point the case law relied by Mr. Pawaskar reported in *1996 II CLR 259* as mentioned earlier is application and relevant while deciding the Revision Application. Similarly, if the impugned

order is not legal and proper or under the changed circumstances, it does not survive the Industrial Court certainly can exercise the powers of superintendence under Section 44 of the M.R.T.U. and P.U.L.P. Act. The cases relied by Mr. Pawaskar of Honourable High Court, Bombay as detailed above, in fact lay down the powers of superintendence to be exercise under Section 44 of the M.R.T.U. and P.U.L.P. Act and therefore in the case in hand, considering the changed circumstances as detailed above, I am inclined to exercise the powers conferred under Section 44 of the M.R.T.U. and P.U.L.P. Act and hence I answer the point No. 1 accordingly.

10. *Point No. 2.*—In view of the foregoing reasons, I pass the following order :—

Order

Revision Application (ULP) No. 91 of 2002 is allowed.

The order dated 22nd February 2002 passed by the 12th Labour Court, Mumbai in Misc. Criminal Complaint (ULP) No. 19 of 2002 of issuance of showcause notice as to why process should not be issued, is quashed and set aside.

No order as to cost.

U. R. PATIL,
President,
Industrial Court, Maharashtra,
Mumbai.

Mumbai,
Dated the 30th July 2002.

(Sd.) K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 8th August 2002.

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INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT,

REVISION APPLICATION (ULP) No. 64 of 2002. *IN* COMPLAINT (ULP) No. 10 of 2002.—A.S.I. Solkar, Reham Ranji Building, 4th Floor, R. No. 47, Mazgaon Jhunna Bazar, Dilima Street, Mumbai 400 010.—*Applicants—Versus*—(1) Mazgaon Dock Limited, Dockyard Road, Mumbai-10. (2) Shri P. K. Mukharjee, General Manager (S.B.) Mazgaon Dock Limited.—*Respondents.*

In the matter of Revision Application under Section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri R. D. Bhat, learned Advocate for the Applicants.

Shri R. S. Pai, learned Advocate for the Respondents.

Oral Judgment

(Dated the 27th July 2002)

The Revision in question is preferred by the Original Applicant feeling aggrieved of the order below Exh. U-2, dated 2nd February 2002 passed by the 11th Labour Court, Mumbai whereby the said Court dismissed the application of the Complainant which was for the prayer that the Respondents should not terminate the services of the Complainant and in case any such order has been passed, to temporarily withdraw the same.

2. Brief facts giving rise to the case may be stated as follows :—

It is seen that Complainant Shri Solkar was working as a Tool-Room Attendant. The said Complainant was chargsheeted on 13th July 1998 on the allegation that he made false entries in the Muster-Roll and thereby allegedly cheated the Respondents. Prior to issuance of the charge-sheet, on 16th June 1998 he was suspended. The Enquiry Officer held the charge levelled against the delinquent was proved and ordered for dismissal, w.e.f. 6th December 2001. The Complainant has filed complaint (ULP) No. 10/2002 on 9th January 2002 thereby alleging unfair labour practices against the Respondents under section 28 read with item 1(a), (b), (c), (d), (f) and (g) of schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. During the pendency of the said complaint, Application for interim relief Exh. U-2 was taken out requesting therein that the Respondents should not terminate the services of the Complainant and in case any such order has been passed to temporarily withdraw the same as referred earlier.

3. The main contention and grievance of the Complainant is that in the enquiry no Original Muster Roll was produced wherein allegedly false entries are made by the Complainant which is written in English. It is contended that since the Muster-Rolls have been signed by the Officer is the only T. No. of the Complainant which is 19112 has been shown twice. It is submitted that the Complainant has studied only upto VIIIth Std. in Vernacular, has not been in a position to write in English. It is submitted that the Complainant has been victimised as no original job cards have been produced in the enquiry by the Management but records were fabricated. It is also contended that the findings of the Enquiry Officer are perverse. Thus the Complainant states that there is an apprehension of termination of his services at the hands of the Respondents. Complainant states that the proposed action of his dismissal amounts to unfair labour practices at the hands of the Respondents. On these and other grounds the Complainant claims that he has got a *prima facie* case and the balance of convenience also lies in his favour. Therefore, prayed for the reliefs detailed above.

4. The Respondents by filing Reply Exh. C-2 resisted the Application and the same may be summarised as under :—

It is stated that admittedly the Complainant was chargesheeted by order dated 13th July, 1998 for serious misconduct under S.O. 22(4), 22(12) as well as S.O. 24(g) of the standing orders applicable to the parties to the litigation, against which enquiry has been held whereby admittedly the said workman has participated in the enquiry and defended through his Representative. The Enquiry Officer after conducting the enquiry submitted his findings wherein the said workman was found guilty of misconduct in respect of fraud or dishonesty in connection with the employer's business etc. and the said findings have been served on the Complainant by letter dated 27th December 2001 and the Disciplinary Authority after considering the same issued the dismissal order dated 5th December 2001 which was also sent to the Complainant by R.P.A.D. to be effective from 6th December, 2001. In substance it is contended that when the charge levelled against the delinquent is proved, no relief be granted as prayed for. The Respondents further stated that the Complainant has not disclosed any unfair labour practices under item 1(a) to (g) of schedule IV of the M.R.T.U. and P.U.L.P. Act. Thus it is requested that the application Exh. U-2 be dismissed.

5. I have called for the record and proceedings and gone through the same. Heard Mr. R. D. Bhat, learned Advocate for the Applicant and Mr. R. S. Pai, learned Advocate for the Respondents. The following points arise for my determination with my findings thereon as below :—

Points—

(1) Whether Revision Application (ULP) No. 64 of 2002 is to be allowed by setting aside the order below Exh. U-2 dated 2nd February 2002 ?

(2) What order and relief ?

Findings—

Point No. 1.—No.

Point No. 2.—Please see final order.

Reasons

4. *Point No. 1.*—Record and proceedings reveals that Complainant Shri Solkar was working as Tool-Room Attendant. He was chargesheeted on 13th July 1998 in respect of charges, detailed above and particularly in respect of the entry depicting in Exh. 'E' which pertains to overtime job done by the concerned employee and the said entry '19112' is appearing at Sr. No. 5 and again at Sr. No. 11 showing 7 hours overtime work done by the Complainant. Now the main contention and grievance of Mr. R. D. Bhat, learned Advocate for the Applicant is that infact while conducting the departmental enquiry, no Original Muster-Roll was produced by the employer and therefore the conclusion drawn by the Enquiry Officer regarding effecting double entry by the Complainant is totally wrong and erroneous. Mr. Bhat further pointed out that the witnesses examined before the Enquiry Officer have not specifically deposed that the Complainant Shri Solkar has effected the double entry. According to Mr. Bhat the witness Shri P. S. Sawant earlier in his evidence denied the knowledge of effecting the double entry by the Complainant. However, subsequently on page No. 21 of the notes of evidence before the Enquiry Officer, has submitted that the Complainant Shri Solkar has effected the double entry. In view of this position. Mr. Bhat canvassed that the burden was on the employer to prove that the Complainant himself has effected the double entry in respect of overtime and when there is no cogent and sufficient evidence the Enquiry Officer and the Labour Court ought to have considered the said position and the conclusion drawn by them holding that the Complainant is responsible is without any base and supporting evidence. Mr. Bhat also argued that the Labour Court has not given any reason while rejecting the Application Exh. U-2 on the point of *prima facie* case and balance of convenience and therefore it has caused

prejudice to the Applicant herein and thereby stressed for setting aside the impugned order passed by the Labour Court dated 2nd February 2002. In support of his argument, Mr. Bhat invited my attention to a case reported in *1971 II LLJ page 407 (M/s. Barely Electricity Supply Co. Ltd.,* Vs. *The Workmen and others).* On going through this case, it indicates that there was a problem for consideration *i. e.* claim for Bonus for the year 1960-61 against the Electrical Company. While dealing with the said problem, it has been observed by the Apex Court—

> "If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof must be filed and opportunity afforded to the Opposite Party who challenges this fact. This is both in accord with the principles of natural justice as also according to the procedure under Order XIX, Civil Procedure Code and the Evidence Act, both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as S. 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced."

I am aware that in the case in hand, as canvassed by Mr. Bhat, learned Advocate for the Applicant the Original Muster Roll was not produced while conducting the departmental enquiry and therefore non-production of the Original by the employer amounts to not giving a fair and proper opportunity to the Complainant when there was a burden on the employer's side to produce the original documents.

7. Mr. Bhat also placed his reliance on a judgment reported in *1999 I CLR 379 (Savita Chemicals Pvt. Ltd.* Vs. *Dyes and Chemical Workers Union and another).* In this case there was a point for consideration in respect of the findings of the Labour Court as regards strike by workman to be illegal on grounds covered by S. 24 (*1*) (*a*) and S. 24 (*1*) (*i*). Whether High Court can interfere with same in writ jurisdiction. As discussed earlier the findings reached by the Labour Court on the relevant terms were patently erroneous and de horse the factual and legal position or record and the High Court would have failed to exercise the jurisdiction if it had not set aside such patently illegal findings of Labour Court. Thus relying on this case, Mr. Bhat urged that in the case in hand the Labour Court has not properly given the reasoning while rejecting the Application Exh. U-2 in respect of *prima facie* case etc. and therefore under section 44 the Revisional Court can interfere with the order of the Labour Court and set aside the same.

8. It is significant to note that in the present case the allegation against the delinquent employee is in respect of making double entry regarding overtime done by him, as detailed above. Therefore the charge-sheet was issued by the employer as per the standings orders applicable to the parties as detailed earlier. There is a contention of the employer that the second entry for overtime duty has been effected by the Complainant which has been stoutly denied by the Complainant stating that the Muster-Roll in respect of overtime duty is kept and handled by another person and not by the delinquent employee and hence there was no question of effecting the double entry in respect of overtime. Realising this controversy, it is to be noted that the question to be investigated is as to who is to be benefitted by effecting the double entry or whether the Complainant was unnecessarily victimised by someone else by effecting double entry, as referred to above. This controversy infact can be resolved and sorted out by adducing the oral and documentary evidence by both the parties. In the case

in hand record reveals that the Complainant was already served the order of dismissal w.e.f. 6th December 2001 and the same was sent by RPAD. The present complaint is filed by the Complainant on 9th January 2002. Meaning thereby after service of the dismissal order the Complainant has filed the Complaint and the Application Exh. U-2. In view of this position the question of alleged apprehension of dismissal of the Complainant does not arise when already dismissal order was served.

9. I am aware that during the course of arguments Mr. Bhat pointed out section 30 (*2*) of the M.R.T.U. and P.U.L.P. Act, which pertains to "In any proceedings before it under this Act, the Court may pass such interim orders (including temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of which is an issue in such proceedings), pending final decision." It is to be noted that there is a proviso which lays down that " provided that, the Court may, on an application in that behalf, review any interim order passed by it." In view of the foregoing provisions, Mr. Bhat canvassed that though the order of dismissal has been passed but requested to withdraw the same temporarily. The said contention of Mr. Bhat, learned Advocate for the Applicant, at this juncture, cannot be accepted for the simple reason that departmental enquiry has already been concluded against the Complainant and the charges levelled against him have been proved and order of dismissal has been already served on the Complainant. It is pertinent to note that if the Complainant at the time of trial proves unfair labour practice on the part of the employer and further proves that the findings of the enquiry officer are perverse and not based on the evidence then in that case the Complainant will get full relief by setting aside the dismissal order. At this stage when the entire enquiry has been completed as detailed above, it will not be proper to interfere with the order passed by the Enquiry and also of the Labour Judge.

10. It is important to note that while dealing with the application for *interim relief*, Courts have to see *prima facie* case, balance of convenience and irreparable loss. In the present case as mentioned earlier, there is a controversy between the parties in respect of effecting double entry of overtime duty and the Report of the Enquiry Officer is already submitted and if the said report is perverse and principles of natural justice were not followed then in that case the order of dismissal can be set aside. Meaning thereby the Complainant at the stage of final hearing will get the benefit in respect of his employment. It is because the relief can be compensated by way of monetary consideration. Hence the question of irreparable loss at this stage does not arise. I am aware that much was canvassed in respect of the order passed by the Labour Court that the same is without any sufficient reason on the aforesaid settled principles while considering the Application for interim relief. The Labour Court has in the impugned judgment repeatedly observed that at this juncture the interim relief cannot be granted because at the time of final hearing the Complainant if proves the grievance made in the complaint then the relief prayed for in the interim relief application and also in the main complaint can be considered. In view of this position, I don't find that there is any illegality committed by the Labour Court while passing the impugned order.

11. At the time of argument Mr. R. D. Bhat, took me through the evidence of the material witnesses examined before the Enquiry Officer and thereby pointed out the contradictory statements made by them in respect of non-production of the Original Muster and the double entry effected in Exh. 'E'. He further stressed that the Complainant has studied only upto VIIIth Std. and considering the handwriting appearing on Exh. 'E', it shows that it is written by someone else and not by the Complainant because the said handwriting is quite superior and similar to all the entries effected therein. At this stage on the said points, if any opinion is expressed by this Court, it will cause prejudice to either side because the Main Complaint is still pending before the Labour Court for disposal.

12. On the other, Mr. R. S. Pai, learned Advocate for the Respondent supported the judgment of the Labour Court and canvassed that the interim relief as prayed by the Complainant in the Application Exh. U-2, cannot be granted. He also touched the merits in respect of the Main Complaint. But I don't find that at this stage it is necessary for me to go into the merits and demerits of the case. In support of his contentions, Mr. Pai relied on a case reported in *2002 (293) FLR 1178 (Chief Executive Officer, Sangli Zilla Parishad* Vs. *Rajaram Rau Gavali and another).* On going through this case, it indicates that there was a point for consideration in respect of section 44 of the M.R.T.U. and P.U.L.P. Act. The Industrial Court, Jurisdiction Respondent was dismissed from service for overwriting over date of birth in service book. After domestic enquiry Labour Court upheld the order of dismissal. Enquiry has been held to be fair and proper by Labour Court. Industrial Court has no power and jurisdiction to interfere with such order in limited supervisory jurisdiction under section 44 of the Act. I don't find that the said case law is helpful for the simple reason that in the ruling, the enquiry in respect of fairness has been held to be fair and proper by the Labour Court and in the case in hand while deciding Exh. U-2 the question is whether the departmental enquiry is fair or not and also the findings of the enquiry officer are perverse or not. Similarly in the said ruling there was an overwriting in respect of the birth date in the service book and in the present case there is no question of overwriting but from Exh. 'E' it appears that the overtime duty is mentioned twice at Sr. Nos. 5 and 11. Hence on this ground, the case law relied by Mr. R. S. Pai is not helpful.

13. On carefully going through the facts and circumstances involved in this case and on scrutinising the record and proceedings before the Enquiry Officer, including the judgment of the Labour Court it is rather difficult for this Court to invoke the powers under Section 44 and to set aside the impugned order passed by the Labour Court. Hence, I answer the point No. 1 in the negative.

14. Before passing the order, considering the facts and law points involved in the present case if the same is disposed of expeditiously it will meet the ends of justice.

15. *Point No. 2.*—In view of the foregoing reasons, I pass the following order :—

Order

Revision Application (ULP) No. 64 of 2002 is dismissed.

Complaint (ULP) No. 10 of 2002 is expedited and to be disposed of by the end of November, 2002.

Parties and Advocates are directed to assist the Labour Court, without taking uncalled adjournments.

U. R. PATIL,
President,
Industrial Court, Maharashtra,
Mumbai.

Mumbai,
Dated the 23rd July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 31st July 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

REVISION APPLICATION (ULP) No. 42 OF 2002 In COMPLAINT (ULP) No. 217 OF 1997.—Maharashtra State Road Transport Corporation, Office of the Divisional Controller, Mumbai Division, Kirol, Mumbai 400 086.—*Applicant—Versus*—Shri Sampat Ramchandra Bhosle, New Railway Police Lane, Bldg. No. 6, Room No. 375, Pant Nagar, Ghatkopar, Mumbai 400 075.—*Respondent.*

In the matter of Revision U/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri. U. R. Patil, President.

Appearances.— Shri. B. K. Hegde, Ld. Advocate for the Applicant.

Respondent in person.

Oral Judgment

(Dated the 23rd July 2002)

The present Revision Application is preferred by the Original Respondent *i.e* Maharashtra State Road Transport Corporation, Bombay Central Depot, feeling aggrieved of the judgement and order dated 29th September 2001 passed by the 6th Labour Court, Mumbai whereby the said Court partly allowed the Complaint (ULP) No. 217/97 filed by the Complainant *i.e.* Respondent herein. The Labour Court held that the Respondents have engaged in unfair labour practices under item No. 1(b), (c), (f) and (g) of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971 on and from 29th March 1997. The Respondents were directed to reinstate the Complainant with continuity of service, but without backwages, on the post of Driver *w.e.f.* 29th March 1997, within a period of one month from the date of this Order.

2. Brief facts giving rise to the case may be stated as follows :–

It is seen that the Original Complainant Shri Sampat Ramchandra Bhosle joined the services of Maharashtra State Road Transport Corporation *w.e.f.* 1st February 1982 and was drawing salary of Rs. 5000 p.m. He was attached to Mumbai Central Depot. on 1st December 1996 the Complainant was deputed to ply the bus from Mumbai to Kolhapur and the said bus was to leave at about 7-30 a.m. Though he was asked perform the aforesaid duty, it is alleged that he refused to attend the same, as he was under the influence of alcohol. He had also used arrogant language and his behaviour was not proper. Therefore he was issued a charge-sheet on 2nd December 1996 under the Discipline and Appeal Procedure, which pertains to (*i*) Wilful insubordination or disobedience whether individually and jointly of any unlawful and reasonable orders of superior; (*ii*) Indiscipline; (*iii*) Insolent, impertinent, insubordinate or uncivilized behaviour towards any employee or passenger on duty; (*iv*) found to have consumed or being alcohol liquor or any type of drug while on duty and/or outside the duty hours within the premises or vehicles of the Corporation. The said enquiry was conducted wherein the delinquent Bus Driver participated. The enquiry officer held the charges levelled against him were proved. A showcause notice dated 20th March 1997 was issued to the Complainant and the same was replied by him. It is contended that as per the contents of the said notice, the Complainant strongly apprehended that the Original Respondents may terminate his services by way of dismissal on or before 3rd April 1997.

3. Thus the Complainant filed Complainant (ULP) No. 217/97 alleging unfair labour practice on the part of the Applicant herein under item 1(b), (c), (d), (f), (g) of Sch. IV of the MRTU & PULP Act and prayed for the necessary reliefs, mentioned in the complaint. The main contention and grievance of the Complainant is that the enquiry was conducted on 17th January 1997 and after conclusion of the so-called enquiry in one day, Respondent No. 2 issued showcause notice dated 20th March 1997 and the same was duly replied on 29th March 1997 *i.e.* within 4 days. The Complainant states that the charge levelled against him was totally false and fabricated because on 1st December 1996 at 5-00 p.m. the Complainant was not on duty as he was not keeping well. It is further contended that the enquiry was not fair and proper and the Respondent examined only one witness *viz.* S. B. Khadekar who acted as an Management representative in the said enquiry. According to him the material witnesses Shri S. D. Coonal

and Shri A. T. Surve who have signed the report dated 1st December 1996 were not examined by the Respondent in the enquiry. In short, the Complainant states that the enquiry was not conducted properly and the principles of natural justice were not followed. Therefore, in the complaint prayed to restrain the Respondents from indulging in unfair labour practice and also from terminating his services by way of discharge or dismissal.

4. The Original Respondents filed their Written Statement Exh. C-2 and thereby resisted the Complaint, stating as follows :–

It is submitted that on 1st December 1996 the Complainant has committed grave and serious misconduct at about 5.30 p.m. Complainant was posted for duty at Mumbai-Kolhapur route. However, he did not attend his duties and he was called in the Control Cabin. It is submitted that the Traffic controller Shri S. B. Khadekar questioned him as to why he did not attend his duties when he was required to take the bus at about 7.30 a.m. Thereafter the Complainant lost his temper and replied to the Traffic Controller in the most insolent manner that the Traffic Inspector was at liberty to take any action against him. He also gave threats to the Traffic Inspector that he would be assaulted on the spot for questioning. Thereafter he was taken to Divisional Traffic Officer and it was revealed that the Complainant was under the influence of alcohol liquor within the premises of the Corporation. While giving reply to the questions, he crossed the limits and behaved in a rule manner and thereby insubordination to his superior. It is asserted that accordingly a chargesheet was issued on 2nd December 1996.

5. Respondents in the Reply contended that during the course of enquiry, principles of natural justice were followed. Panchnama and Spot Statement given by the Complainant were produced on record, wherein the Complainant has admitted that he had consumed liquor and he had prayed for being excused. It is also submitted that in the aforesaid circumstances when the charge against the Complainant is proved, he is not entitled for any relief, as mentioned in the prayer clause of the complaint and requested to dismiss the same.

6. I have called for the record and proceedings and gone through the same. Heard Mr. B. K. Hegde, Ld. Advocate for the Applicant and Mr. Sampat R. Bhosle in person. The following points arise for my determination with my findings thereon as below :—

Points.—

(*i*) Whether Revision Application (ULP) No. 42/2002 is to be allowed by setting aside the impugned order dated 20th September 2001 passed by the 6th Labour Court, Mumbai ?

(*ii*) What order and relief ?

Findings—

Point No. 1.— Yes. (Complaint is remanded back for afresh hearing).

Point No. 2.—Please, see Order below.

Reasons

7. *Point No. 1*.—Record and Proceedings indicate that Mr. Sampat R. Bhosle joined the services of the M.S.R.T.C. as a Bus Driver *w.e.f.* 1st February 1982. On 1st December 1996 he was assigned the duty to ply the bus from Mumbai to Kolhapur which was to leave at 7-30 a.m. It indicates that the delinquent bus driver was under the influence of alcohol and refused to attend the duties, there were exchange of words and he gave threats to the Traffic Inspector. Hence, a charge-sheet was issued to him on 2nd December 1996. Departmental enquiry was conducted and the Enquiry Officer held the charge levelled against the delinquent was proved. Therefore a show cause notice for imposing the punishment was issued on 20th March 1997, which was replied by the delinquent bus driver on 29th March 1997. Feeling aggrieved of the apprehended dismissal of his services, he rushed to the Labour Court and filed Complaint (ULP) No. 217/97, as detailed above.

8. The Labour Court has in the impugned judgment held that the enquiry was fair and proper and findings of the Enquiry Officer are also not perverse, but held that the MSRTC was guilty of unfair labour practice within the meaning of item 1(*b*), (*c*), (*f*) and (*g*) of Sch. IV of the MRTU & PULP Act and passed the order by partly allowing the complaint of the Complainant, as detailed earlier.

9. Now the main contention and grievance of Mr. Hegde, Ld. Advocate for the Applicant is that infact in the Main complaint neither he nor Mr. Nagle or Mr. Kulkarni, Advocates argued before the Labour Court and hence the judgment delivered by the Labour Court dated 29th September 2001 is totally imaginary. Mr. Hegde pointed out and stressed that he himself had wanted to examine the witnesses for the S. T. Corporation and without giving such opportunity, the Labour Court has straightaway delivered the judgment without the appearance of the Complainant and his Advocates. I have called for the record of the Main Complaint and it shows that on 24th January 2001. Application Exh. C-8 was given by Mr. Hegde, stating therein that neither the Complainant nor his Advocate are remaining present in the complaint and it is for the Complainant to prove the unfair labour practice and therefore for want of such evidence, the complaint be disposed of for want of prosecution. The Labour Court has granted final chance by writing on the said Application. The Roznama dated 29th September 2001 indicates that the Complainant was absent and Mr. Hegde for the Respondent was present and the Labour Court passed final order by partly allowing the complaint. Thus it makes it clear that the Labour Court has erroneously partly allowed the complaint though the Complainant was not present and has failed to adduce the oral evidence proving the unfair labour practice on the part of the Original Respondents.

10. Similarly Mr. Hegde pointed out that he could not get the certified copy of the impugned judgment and received only the operative part of the order dated 29th September 2001 on 18th December 2001 and hence he could not annex the copy of the judgment with the Revision Application. Mr. Hegde submitted that infact only the operative part of the order was passed by the Labour Court in the absence of the parties and no full judgment was dictated on 29th September 2001. To verify this contention, I have called the Stenographer *viz.* Smt. Rajam R. attached to 6th Labour Court and she was asked as to actually when the operative part and full judgment was delivered by the Labour Court. She submitted that on 29th September 2001 only operative part of the order was dictated by the 6th Labour Court, Mumbai then presided by Shri P. W. Bhuyar and actually on 16th March 2002 the judgment was dictated by the Labour Court. This system and procedure adopted by the Labour Court in the case in hand is totally illegal and unknown to the Civil Procedure Code. The Labour Court should have given proper opportunity to the Original Respondents and should have ascertained whether the oral evidence is to be led or not and the matter should have been posted for arguments, but failed to do so and straight away without oral evidence and the submissions advanced by the parties, delivered the impugned judgment and the same is totally unacceptable. The submission of Mr. Hegde is consistent to the record and in his absence the Labour Court has without the appearance of the Complainant and his Advocate and without hearing the arguments, passed the impugned judgment and order. Without going into detail and on seeing the report of the Enquiry Officer, it is explicit that there is a mention in the said report that the delinquent Bus Driver has admitted in his statement dated 1st December 1996 that he had consumed alcohol and therefore committed a mistake and requested to excuse the same. Thus giving a go-bye to the evidence of the material witness and the statement of the Complainant, which is in the report of the Enquiry Officer, the Labour Court has not properly appreciated the facts and circumstances.

11. It is also pertinent to note that before passing the order, the Labour Court has held that the Respondent Corporation has engaged in unfair labour practice under item 1(*g*) of Sch. IV of the MRTU & PULP Act, but in the operative part of the Order, the Labour Court has held that the Respondents have engaged in unfair labour practices under item 1(*b*), (*c*), (*f*) and (*g*) of Sch. IV of the Act on and from 29th March 1997. Thus the Labour Court has made contrary observations regarding the unfair labour practice under particular items and on this score also the impugned judgment and order is erroneous.

12. It is further significant to note that the Labour Court had also passed Order below Exh. U-2 dated 23rd December 1997 thereby confirming the *ex-parte* order dated 3rd April 1997 granting the relief of not to terminate the services of the Complainant. Shri Hegde, Ld. Advocate for the Applicant pointed out that the prayer of the Complainant in the Main complaint is to restrain the Respondents from terminating the services of the Complainant. He further pointed out that as per the Court's Order, the Complainant is still in employment. It is,

therefore, the direction given by the Labour Court in the impugned judgment dated 29th September 2001 to reinstate the Complainant with continuity of service, but without backwages on the post of Driver *w.e.f.* 29th March 1997 within a period of one month from the date of the order is totally contrary to the record and factual position. I find some substance in the submissions of Mr. Hegde and on this score also the impugned judgment and order is erroneous.

13. Shri Sampat Bhosle, the Respondent herein argued that the judgment delivered by the Labour Court is consistent to the record and proper and hence he vehemently prayed for dismissal of the Revision Application.

14. On carefully scrutinising the record and proceedings and the facts and circumstances involved in this case, the Revision in question deserves to be allowed because as per Sec. 44 powers are conferred upon the Industrial Court in so far as evidence is concerned, to set aside the order under revision when the evidence on record, reasonably read is incapable of supporting the order. Therefore, I am inclined to invoke the powers under the said Section for setting aside the impugned judgment and order and to remand back the complaint (ULP) No. 217/97 for hearing afresh and to dispose of the same within the time-limit. Thus I answer the Point No. 1 accordingly.

15. *Point No. 2* :– In view of the foregoing reasons and finding on Point No. 1, I pass the following Order :–

Order

Revision Application (ULP) No. 42 of 2002 is allowed.

The judgement and order dated 29th September 2001 passed by the 6th Labour Court in Complaint (ULP) No. 217/1997 is set aside.

Complaint (ULP) No. 217/97 is remanded back for afresh hearing by the 6th Labour Court, Mumbai and the complaint is to be placed on board on 12th August 2002 at 11.00 a.m.

Parties and Advocates are directed to appear accordingly and co-operate the Court for disposal of the said complaint (ULP) No. 217/97 by the end of October, 2002.

Order below Exh. U-2, dated 23rd December 1997 is to continue till disposal of the complaint.

R & P be sent back.

U. R. PATIL,
President,
Industrial Court, Mah. Mumbai.

Mumbai,
Dated the 23rd July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 29th July 2002.

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INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT

Ex. O-4

REVISION APPLICATION (ULP) No. 6 of 2002. In COMPLAINT (ULP) No. 92 of 1999.—Sambhaji Vithal Mane, Kisan Nagar, Road No. 16, Bhatwadi, Jyoti Ling Niwas, Ground floor, R. No. 1, Thane 400 604.—*Applicant—versus*—The General Manager, BEST Undertaking, BEST House, Mumbai 400 001.—*Opponent.*

In the matter of Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri S. A. Khanolkar, Ld. Advocate for the Applicant.

Shri P. V. Dhoble, Ld. Advocate for the Respondent.

Oral Judgment

(Dated the 16th July 2002)

The present Revision Application is preferred by the Original Complainant *vis.* Mr. Sambhaji Vithal Mane feeling aggrieved of the judgment and order dated 3rd October 2001 whereby the 5th Labour Court, Mumbai dismissed the complaint of the Complainant which was for setting aside the dismissal order dated 18th September 1998 in the departmental enquiry and for reinstatement with full backwages and continuity of service.

2. The brief facts giving rise to the case may be stated as follows :–

It is seen that the Complainant Shri Mane joined the services of the BEST Undertaking as a Bus-Driver *w.e.f.* 5th March 1977. He was working in Ghatkopar Depot, Traffic Dept. On 7th August 1998 when he was on duty and plying the bus at Subhashchandra Bose Road, Meghani Chowk, Mulund (W.), an accident took place and thereby one motorcyclist alongwith his daughter-in-law on the back seat met with an accident and the said daughter-in-law died on the spot. After necessary formalities, the Accident Inspector submitted the report and a charge-sheet under S. O. 20(j) "habitual or gross neglect of work or habitual or gross negligence" was issued on 13th August 1998. In the departmental enquiry, the Complainant participated and the charge levelled against him was proved and he came to be dismissed *w.e.f.* 18th September 1998. Two departmental appeals were preferred and the same came to be rejected. on 16th December 1998 and 29th April 1999 respectively. Thus after exhausting the departmental remedies, the Complainant filed complaint on 8th February 1999 alleging unfair labour practice on the part of the Respondent BEST Undertaking u/s. 28 read with item 1(*a*), (*b*), (*c*), (*d*), (*f*) & (*g*) of Sch. IV of the MRTU & PULP Act, 1971.

3. It is the main contention in the complaint that the accident has taken place as the scooter gave dash to the bus which was driven by the Complainant. There was no fault on the part of the Complainant, still the Enquiry Officer held him guilty and dismissed from the services. In short, it is contended that the Enquiry Officer did not consider the evidence and has not conducted the enquiry in accordance with the principles of natural justice. The punishment awarded is also on patently false reasons, with undus haste and the same is shockingly disproportionate. Therefore, the Complainant prayed for the reliefs, referred to above.

4. The BEST Undertaking by filing written Statement resisted the complaint and the same may be summarised as follows :–

It is denied that the Respondent has engaged in unfair labour practice, as alleged. According to Respondent, the Complainant has committed grave and serious type of misconduct and as per the provisions of the Standing Orders, charge-sheet under S. O. 20(j) was issued. It is denied that in the enquiry, the Trying Officer violated the principles of natural justice. It is further denied that the charges levelled against the Complainant were not proved in the enquiry. It is also denied that the order of dismissal awarded to the Complainant was on patently false reasons and the same is shockingly disproportionate. It is contended that the past service record of the delinquent Bus Driver was not satisfactory and there is no question of unfair labour practice. The Enquiry Officer has rightly considered the facts and circumstances and passed the order of dismissal. Thus the Respondent requested to dismiss the Complaint.

5. I have called for the record and proceedings and gone through the same. Heard Mr. S. A. Khanolkar, Ld. Advocate for the Applicant and Mr. P. V. Dhoble, Ld. Advocate for the Respondent. The following points arise for my consideration, with my findings thereon as below :–

Points

(i) Whether Revision Application (ULP) No. 6/No. 2002 is to be allowed by setting aside the Judgment and order dated 3rd October 2001 ?

(ii) What order and relief ?

Findings

Point No.1.—No.

Point No. 2.—Please, see Order below.

Reasons

6. *Point No. 1* :– In the beginning it is necessary to place on record that while arguing the Revision Application, both the parties have not canvassed on the point of fairness of the departmental enquiry and the findings of the Enquiry Officer. The limited point argued by both the parties is regarding punishment of dismissed and according to the Applicant, the same is shockingly disproportionate which is denied by the BEST Undertaking.

7. Record & Proceedings indicate that Mr. Mane, Bus Driver was on duty on 7th August, 1998 and he was plying the bus at about 9 a.m. at Subashchandra Bose Road, Meghani Chowk, Mulund (West), There is a sketch-map in the proceedings produced by the BEST Undertaking and it shows that the aforesaid road is four-square. From north-side it is shown as a Dumping Road and towards the south, there is Purshottam Kheraj Road, East-West Road is known as Subashchandra Marg and the said Chowk is known as Javerilal Meghani Chowk. On seeing the said map, it shows that the motor-cyclist alongwith his daughter-in-law on the back-seat was proceeding from Dumping Road, taking left turn to the Main Road towards the east-side. At the relevant time, the delinquent bus driver was driving the bus from west to east and the aforesaid accident took place on the said road towards the east-side.

8. Before the Enquiry Officer, the BEST Undertaking has examined certain witnesses, out of which evidence of Mr. Karmarkar, the motor-cyclist and whose daughter-in-law died on the spot, appears to be first-hand. In the evidence, the said witness has repeated the entire incident and stated that he was coming on the motor-cycle on Dumping Road and took a turn to the east on the left-side of the road and at that time, the Bus dashed then and in consequence thereof, his daughter-in-law fell down and he also fell down on one side. Thereafter he immediately saw his daughter-in-law, but her movement was stopped. As per the evidence of this witness, Traffic Police came and with the assistance of 2 persons, his daughter-in-law was carried to Mulund Hospital by rickshaw. On knowing this, he also followed by another rickshaw and went to Mulund Hospital. Mr. Karmarkar has also deposed that he had also sustained some injury on the head and on the hands and he was given the medical treatment. Later on, he was called in the Police Station and his statement was recorded and there he was informed by the Police that his daughter-in-law had already expired. Similarly, there is an evidence recorded of accident Inspector Shri. Chawre and in his evidence he has specifically in the cross-examination deposed that the dash given by the bus to the lady and also to the motor-cyclist. As per the evidence of this witness, the dash was given by the bus to the lady who was sitting on the back-seat of the motor-cycle, from the left-side of the bus, 2 feet away from the left-side front door. It further indicates that on the steel bar as the backside of the motor-cycle, there were signs of yellow colour of the bus. On carefully going through the evidence of both the witnesses. I don't find that anything revealed in support of the delinquent Bus Driver.

9. I am aware that much was canvassed by Mr. Khanolkar that at the relevant time while taking the turn, the motor-cyclist himself dashed the bus and the accident in question took place and one lady succumbed to injury. In short, Mr. Khanolkar canvassed that there was no fault on the part of the Bus Dirver because he was driving the bus in a slow speed and immediately after the accident, he stopped the bus. In support of his submission, he invited my attention to the record and proceedings before the enquiry officer and stressed that the evidence of Mr. Chawre is in support of the bus driver. It is rather difficult to accept the submission of Mr. Khanolkar for the simple reason that Mr. Chawre, Accident Inspector has visited the spot after the occurrence of the incident and he cannot be said to be on eye-witness. It is significant to note that Mr. Karmarkar, who was driving the motor-cycle alongwith his daughter-in-law, as detailed above, has given the particulars of the accident and the situation thereof. The Enquiry Officer has carefully gone through the evidence of Mr. Karmarkar, who is the eye witness and came to the conclusion that the charge levelled against the delinquent under S. O. 20(j) has been proved. It is to be noted that while driving the bus, at the relevant time, the Complainant should have noticed from the side-glasses which are provided on the left and right side of the Bus as to which vehicles are coming/proceeding on the same road. Had the delinquent bus driver vigilant and deligent by seeing the vehicle through the mirror of the left-side, the accident in question could have been certainly avoided, but he failed to do so and therefore I don't find that there is any irregularity or illegality in the report of the Enquiry Officer.

10. The Labour Judge has in the impugned judgment, on the basis of the record, observed and mentioned that the bus had dashed to the daughter-in-law of Mr. Karmarkar and not the motor-cycle dashed the bus. There was head injury to his daughter-in-law and there was no other injury to her and after the dash, the bus want ahead. This circumstance clear indicates that there was no fault on the part of the Motor-cyclist-Shri. Karmarkar, but the front left-side portion of the bus dashed to Mr. Karmarkar and his daughter-in-law and therefore they fell down on the road. The daughter-in-law of Mr. Karmarkar sustained brain injury and therefore, as per the record, she died on the spot. I don't find that there was any error on the part of the said Mr. Karmarkar while driving the motor-cycle and taking a turn, as referred to above. The Trying Officer has discussed the evidence of the relevant witness and came to the conclusion that the charge under S. O. 20(j) has been duly proved against the delinquent.

11. It is to be noted that the issue of fairness of enquiry and findings of the Enquiry Officer, as detailed above, are not challenged in this case and therefore the limited point for consideration is whether the punishment of dismissal of the delinquent bus driver is shockingly disproportionate or not, as referred earlier. Much was canvassed by Mr. Khanolkar that when there was no rashness or negligence on the part of the delinquent, the punishment of dismissal ought not to have been awarded and hence the same is shockingly disproportionate. In view of the foregoing reasons and on cerefully scrutinising the report of the Enquiry Officer and the impugned judgment, it is rather difficult to share the submission of Mr. Khanolkar. In support of his argument, Mr. Khanolkar placed reliance on the cases cited before the Labour Court and urged for allowing the Revision Application.

12. On the contrary, Mr. P. V. Dhoble, Ld. Advocate for the Respondent supported the judgment of the Labour Court by pointing out the detail report of the Enquiry Officer and the evidence of the material witnesses, referred to above. To substantiate his submission on the point of dismissal order, he invited my attention to a case reported in *2000(4) L.L.N. 1052* (Maharashtra State Road Transport Corporation v/s. Mustaq Ali Amjad Ali Shaikh). On going through this case, it indicates that there was a point for consideration of unfair labour practice under item 1(*b*) of Sch. IV of the MRTU & PULP Act, 1971. Complaint of unfair labour practice

against employer driver of Petitioner Transport Corporation was dismissed from service after domestic enquiry for causing the death of a ten year old girl due to his rash and negligent driving of bus. He challenged the order of dismissal before Labour Court by filing complaint of unfair labour practice against employer stating that dismissal was not proper as there was not material against him before the enquiry officer and further submitting that in the criminal case against him for the same incident he had been acquitted Labour Court, and Industrial Court on appeal, held that unfair labour practice under item 1(*b*) of Sch. IV of the Act was established. Hence the writ Petition was filed by the Employer Corporation. It is held by the Hon'ble High Court that the nature and scope of criminal prosecution cannot be equated with that of departmental proceedings Charge proved against the employee in departmental proceedings. Dismissal of employee justified. No unfair labour practice by employer. In the case in hand, it appears that a Criminal case u/s. 304(A) is pending in the Court of Metropolitan Magistrate and yet the same is not decided. Hence in this case, there is no question of consideration of the Criminal case and the acquittal thereof, but the fact remains that when the charge is proved against the employee in the departmental proceedings, his dismissal is justified. Mr. Dhoble further placed reliance on a case reported in *2000(1) LLN 811* (Anna Transport Corporation Ltd., Salem *v/s.* (1) Presiding Officer, Labour Court, Combatore (2) S. P. Manickam). In this case, there was a point for consideration u/s. 11-A of the I.D. Act, Driver of bus was dismissed from service after enquiry for involving in a major accident, due to rash and negligent driving, resulting in extensive damage to the bus and injuries to the passengers. Police also registering a case for offences under Sa. 337 and 338, Indian Penal Code. Driver raising industrial dispute Labour Court holding that charges were not proved, directed reinstatement driver with continuity of service and backwages. The said Award has been challenged in the Writ Petitionion the ground *interalia* that Labour Court by setting aside the order of dismissal had exceeded its jurisdiction by making improper appreciation of evidence and directing reinstatement without taking into consideration the fundamental principle relating to appreciation of evidence in a domestic enquiry. While deciding the Write Petition, the Hon'ble Madras High Court held that when the Labour Court, as in this case, adopted a perverse approach in the analysis and appreciation of the materials, contrary to the guidelines given by the Apex Court in the matter of appreciation of the materials placed in the domestic enquiry, there is no othere alternative for the High Court except to invoke Art. 236 to quash the Award. In the instant case, on proved charges, the management is justified in imposing the punishment of dismissal. Mr. Dhoble also pointed out an unreported judgment in Appeal No. 1179 of 1984 dated 13th November 1987 (Municipal Corporation of Greater Bombay *v/s.* M. S. Apte & 2 ors). In the said Writ Petition also there was a point for consideration regarding the accident which took place and the punishment of dismissal to the delinquent employee. It has been observed that "The termination of the services is the only quantum that is available and justified on record. It need not be under estimated that driving of vehicle in such a rash and negligent manner carries the potential danger not only to the passengers but also to the public at large using the roads. To show sympathy in such a cesual manner would be misplaced. We, therefore, cannot persuade ourselves to accept that contention for scaling down the punishment. "Thus relying on the aforesaid cases, Mr. Dhoble submitted that in the impugned order passed by the Labour Court, there is no error and therefore the powers u/s. 44 of the MRTU & PULP Act be not exercised.

13. As discussed earlier and on considering the material available before the Labour Court, I don't find that the dismissal of the Complaint by the Labour Court is illegal or erroneous. It is important to note that in the present case while imposing the punishment of dismissal, the Enquiry Officer has considered the past record of the employee and the same is not satisfactory

for the reason that the delinquent Mr. Mane joined the service of the BEST Undertaking on 5th March 1977 and on 28th November 1978 his increment was reduced for 3 months and on 27th March 1980 his one increment was reduced for 6 months and again on 16th July 1990 his one increment was reduced permanently. Further it shows that the Respondent Undertaking has produced the past service record of the delinquent employee on 14th January 2001 in which so many instances of blameworthy were recorded against the said delinquent Mr. Mane. Thus it reflects that despite the chances given by the Respondent Undertaking, the delinquent has not shown any improvement in the service record. Realising the aforesaid state of affairs, I don't find that any sympathy is required to be shown to the delinquent bus driver because the charge under S. O. 20(j) has been duly proved in the enquiry for committing an accident in which one lady, as detailed above, died on the spot. It is significant to note that in the city of Mumbai, the diligence on the part of the Bus Driver is a muster, otherwise it will be rather difficult for the passengers in the Bus or pedestrians to safeguard their interest if the buses are played in the rash and negligent manner by the Driver. Keeping in mind the situation in Mumbai, which is a crowded city, the delinquent Driver should have taken adequate care while plying the bus, but he failed to do so. Thus, as detailed above, I don't find that the Applicant has made out any exception to the impugned order passed by the Labour Court and to call for the interference of this Court u/s. 44 of the MRTU & PULP Act. It is because the impugned order passed by the Labour Court and also by the Enquiry Officer are consistent to the facts and circumstances on record. In view of this, I answer the Point No. 1 in the *Negative*.

14. *Point No. 2* :– In view of the foregoing reasons, I pass the following Order :–

Order

Revision Application (ULP) No. 6 of 2002 is dismissed. No order as to cost.

U. R. PATIL,
President,
Industrial Court, Mah. Mumbai.

Mumbai,
Dated the 16th July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 29th July 2002.

ON BEHALF OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, PRINTED AND PUBLISHED BY SHRI PARSHURAM JAGANNATH GOSAVI, PRINTED AT GOVERNMENT CENTRAL PRESS, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004 AND PUBLISHED AT DIRECTORATE OF GOVERNMENT PRINTING, STATIONERY AND PUBLICATION, 21-A, NETAJI SUBHASH ROAD, CHARNI ROAD, MUMBAI 400 004, EDITOR : SHRI PARSHURAM JAGANNATH GOSAVI.